A National Hero in Transit:

The Problem of Thomas Paine's American Citizenship

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English by birth, American by adoption, French by decree, a self-proclaimed «citizen of the world», Thomas Paine (1737-1809) was one of those few eighteenth-century writers who have shaped modern political thought. With *Common Sense* (January, 1776; about 120,000 copies sold), he launched — or at least catalyzed — the American independence movement; with *Rights of Man* (1791-92, several hundred thousand copies sold), he awakened the «masses» to their natural and political rights, developed an early theory of the welfare state, and defended the French Revolution against the attacks of Edmund Burke; with *The Age of Reason* (1793-94), he challenged orthodox Christianity by submitting the Scriptures to the acid of reason. Banished from England for «high treason», jailed in France during the Terror, hated in America for his religious views, he sailed back to the United States in 1802, was deprived of his voting rights, and died a forgotten man in New Rochelle (N.Y.).

In November 1802, when he landed in Baltimore, Paine (aged 65) was in an uncomfortable situation, to say the least. After an absence of 15 years, he soon found out that he had lost most of his one-time friends and was being violently inveighed against by Federalist newspapers (some describing him as a "loathsome reptile", others as an "impious buffoon" or as an "obscene old sinner" — see Freeman Hawke 353, 354, 365). Few Americans had forgiven him for the publication of *The Age of Reason* — that "Bible of atheism", that "Devil's Prayer-Book" (Woodward 254) — and for the writing (in Paris) of his both famous and "infamous" open letter to George Washington (July 1796) in which he had depicted the President as a military

cipher (who had lost most of his battles) and an unworthy friend who had not lifted a finger to get him out of jail during the French Terror:

> ... as to you, Sir, treacherous in private friendship (for so you have been to me, and that in the day of danger) and a hypocrite in public life, the world will be puzzled to decide whether you are an apostate or an impostor; whether you have abandoned good principles, or whether you ever had any (Foner 2:723).

Only Jefferson and a handful of Republicans remained on friendly terms with the "enfant terrible" of the age of revolutions.

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In November 1806, Paine went to the polls in New Rochelle to vote for members of Congress and state assemblies. The supervisor of the election was a man named Elisha Ward whose father and brothers, according to Paine, had «joined the British in the war». Paine's account of his own disenfranchisement is contained in two letters (one to Madison, the other to George Clinton) sent from New York in early May 1807:

> I tendered my tickets separately distinguishing which was which, as is the custom; each of which Ward refused, saying to me «You are not an American Citizen [...] Our minister at Paris, Gouverneur Morris, would not reclaim you as an American Citizen when you were imprisoned in The Luxembourg at Paris, and General Washington refused to do it» [...] Upon my telling him that the two cases he stated were falsehoods [...] he got up, and calling for a constable, said to me: «I will commit you to prison.» He chose, however, to sit down and go no farther with it. [...]
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> I accordingly commenced a prosecution against him last fall and the court will sit the 20th of this May. (2:1486-87)

In preparation for the trial, Paine undertook to gather evidence, collecting affidavits from those who could testify to his citizenship: Clinton, Madison, Barlow.

To Vice-President George Clinton he wrote: «As it is a new generation that has risen up since the declaration of independence [...] I wish you would write a letter [...] stating [...] the effects which the work *Common Sense* [...] had upon the country» (May 4, 1807. 2:1489-90). Paine was not a «Founding

Father» in the sense that he had neither been a signer of the Declaration of Independence, nor of the US Constitution; but, as the author of *Common Sense*, he had admittedly been one of the political and ideological co-founders of the American Republic and, if only on that account, could not be denied the title of «American Citizen»: this, at least, was the kind of official recognition — and reminder — he wanted to get from Clinton.

As current Secretary of State, James Madison had in his office James Monroe's report to the then Secretary of State, Edmund Randolph, claiming Paine as an American Citizen when he was in jail in Paris. This is what Paine asked him to do (it must be remembered that Gouverneur Morris, here very critically mentioned by Paine, was a strange character strangely appointed by George Washington as US Minister to France. Morris was a staunch conservative, hostile to the French Revolution, hostile to Paine, and secretly favorable to a radical shift in American diplomacy, i.e. to the reinstatement of Britain — instead of France — as the main partner and ally of the United States):

> When Mr. Monroe became Minister from the United States to the French Government, I was still imprisoned in the Luxembourg [...] As soon as Mr. Monroe could make his own standing good, which required time on account of the ill conduct of his predecessor Gouverneur Morris, he reclaimed me as an American citizen, for the case was, I was excluded from the Convention as a foreigner and imprisoned as a foreigner. I was liberated immediately after Mr. Monroe's reclamation.
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> Mr. Monroe wrote an official account of this to the secretary of state, Mr. Randolph [...] In Mr. Randolph's official answer to Mr. Monroe's letter, he says [...]: "The President [George Washington] approves what you have done in the case of Mr. Paine." [...]
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> I will be obliged to you for an attested copy of Mr. Monroe's letter and also of Mr. Randolph's official answer. [...]
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> As to Gouverneur Morris, the fact is, that he did reclaim me on my application to him as Minister, but his reclamation of me did me no good. (May 3, 1807. 2:1486-87)

In reality, it is not quite the case that Gouverneur Morris reclaimed Paine as an American. Morris's letter to Deforgues, the French Minister of Foreign Affairs (Feb. 14, 1794), reads: «Thomas Paine has just applied to me to claim him as a Citizen of the United States.» But at no point in the rest of

the letter does Morris actually claim him as such, insisting, on the contrary, that Paine «was born in England» — not a very supportive remark under the circumstances! (Vincent 300)

Paine finally sent a letter to his old friend Joel Barlow, still in Paris, who had also interceded for him at the time: «I have prosecuted the Board of Inspectors for disenfranchising me. You and other Americans in Paris went in a body to the Convention to reclaim me, and I want a certificate from you, properly attested, of this fact» (May 4, 1807. Foner 2:1488-89) — a fact which actually took place on January 20, 1794.[1]

The political truth of the matter is complex but pretty clear: born in England, Paine had first been a British subject; at the age of 38, he had left Britain for America, had become a resident there, then a citizen of the newly independent states, and had twice taken the oath of abjuration to the British crown and sworn personal allegiance to the United States, «once as a citizen of the State of Pennsylvania in 1776; and again before Congress [...] when I was appointed Secretary in the office of Foreign Affairs in 1777» (Letter to James Monroe: September 10, 1794. 2:1353). The oath established by Congress (January 16, 1777) for all officers of the continental service and for all holding civil office in Congress was as follows:

> I [in this case Thomas Paine] do acknowledge the Thirteen United States of America [...] to be free, independent and sovereign states, and declare that the people thereof owe no allegiance or obedience to George the Third, King of Great Britain; and I renounce, refuse, and abjure any allegiance or obedience to him; and I do swear that I will to the utmost of my power support, maintain and defend the said United States against the said King George, etc.» (Franklin 2).

Paine was then made an honorary citizen of the French Republic (in August 1792) and was elected to the Convention (in September); but in December 1793 he was dismissed from that assembly, arrested and jailed «as a foreigner», that is as an *Englishman* — the irony being that he was no longer English at the time: the publication of *Rights of Man* had recently caused him to be tried *in absentia* at the Guildhall in London, to be banished from Britain, and therefore deprived of his original national identity — a kind of civil death. It could be argued that, having spent so many years (15 in all) away from the United States, Paine could rightfully be considered as

an alien or at least as a non-citizen. But in 1807 there existed no legislation taking this kind of absence into account. Only in 1808 — maybe as a consequence of the Tom Paine affaire — did the Federalists try to get the US Congress to enact that «if any citizen shall expatriate himself, he shall, ipso facto, be deemed an alien, and ever after be incapable of becoming a citizen» (116).

It would take a whole book to analyze all the political and legal aspects of this strange affair. Although I am well aware that the political context, i.e. the tension between Jeffersonians and Federalists, probably played a more important role than the sheer rigor of the law (let alone the fact that, as a child, Gouverneur Morris had attended school in the Huguenot settlement of New Rochelle, and therefore probably knew the Ward family personally...),[2] I will restrict myself here to analyzing some of the purely formal reasons why Paine finally lost his suit and therefore never recovered his American citizenship.[3]

Madame Bonneville, wife of the French revolutionary printer Nicolas Bonneville, lived for many years on Paine's farm in New Rochelle (this farm, incidentally, was the confiscated property of a former Loyalist, one Frederick Devoe, and had been given to Paine by the New York legislature in 1784, in recognition of his great «patriotic» services). In the notes she left, Mme Bonneville, to whom Paine bequeathed most of his estate, gives interesting information about the trial:

> This case was pleaded, before the Supreme Court of New York by Mr. Riker, then Attorney General [meaning, in fact, District Attorney], and, though Paine lost his case, I as his legatee did not lose the having to pay for it. It is, however, an undoubted fact, that Mr. Paine was an American Citizen. (Conway 2:448)

In his letter to George Clinton, Paine refers to Riker, and to a «Court and Jury», probably that of the First District (then including New York and Westchester counties), but does not mention the New York Supreme Court — which, incidentally, was not then an antechamber of the US Supreme Court but a mere court of first instance. No public record of Paine's action has been found, either in New York City or in Westchester County, and most of the papers left by Riker after his death were accidentally destroyed. (Conway 2:383)

According to Thomas Scoble, a New Rochelle attorney who investigated

the matter in 1946, there may be a technical explanation to this mystery: «The requests of Paine to Clinton, Madison and Joel Barlow, to furnish him with letters for his use on the prosecution of Ward would indicate that the actual proceeding was a motion, based on documentary evidence, rather than a jury trial with witnesses and cross examinations» (29). A motion (i.e. an application to a court for a ruling to relieve the applicant from some injustice) was usually *not* preserved or recorded as part of court reporting.

Although one is tempted to ascribe Paine's defeat to political reasons, it is quite likely that the negative attitude of the court, whichever court it was, was simply dictated by technical defects in legal pleading. In his reply to Paine (May 12, 1807), George Clinton seems to have sensed the problem, expressing doubts «whether the Court will admit it to be read as evidence» (Conway 2:381). As Scoble explains:

> From every known rule of evidence prevailing then and now, such letters (which Paine indicated would constitute his case) would not be admitted in evidence. The reason is abundantly clear. The writers of those letters were alive at the time of the trial. In order to give fair opportunity to the opposition to test the truth or accuracy of the statements in the letters, in simple fairness, the writers should have first been sworn to tell the truth, then testify to matters of which they actually had personal knowledge, and then submit to all the tests which the cross-examining lawyer has at his command to break down such testimony. Such has always been the strict rule in our courts and it properly prevails today.
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> Accordingly, if Paine's attorney tried to present his case merely on letters and affidavits, the presiding judge quite rightfully may have excluded them from evidence and dismissed Paine's complaint, without passing on its merits, for failure to present proper proof. This action would not be a judicial determination that Paine was wrong in his contentions, or Ward right. The merits of the issue simply would not receive judicial consideration, much less determination. The decision would constitute no precedent or court ruling on Paine's citizenship (30).

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The net result of this nonsuit was that Paine, who had so ardently contributed to the establishment of republicanism in America, spent the last two years of his life (he died in June 1809) without any formal citizenship or voting rights.

As early as 1778, Paine had defined himself as a cosmopolitan: «My attachment is to all the world, and not to any particular part» (Foner 1:146). But unlike those who shared or had shared this kind of sentiment (Hume, Voltaire, Condorcet, Gibbon or even Burke)[4], Paine was not only a philosophical cosmopolitan; he was an activist of universal citizenship — neither an abstract citizen of the world nor the citizen of an abstract world. He was prepared to become a *real* citizen of *any* country where universal rights were at stake or imperilled: «Where liberty is, there is my country», Franklin once reportedly told him; «where liberty is *not,* there is mine», Paine allegedly replied. That was why he had come to America; that was why he had then gone to France; that was why he had dreamed of establishing a British republic. And now he was in America again, but this time a citizen of nowhere, a man without a country, a voter forbidden to vote, a disenfranchized Founding Father. He soon after died, but his bones were stolen by William Cobbett, taken back to England, sold, dispersed, never to be found again. Departure, arrival, transit: Could there be a better illustration of the theme of this conference?

Note, Notes, Anmerkungen

1) Barlow's letter to the Court is currently owned by Mr. Richard Maass, Hamson (N.Y.).
2) This detail is mentioned in Boatner 737.
3) My main source here will be a short but well documented pamphlet written by Thomas D. Scoble, Jr. and published in 1946 by the Thomas Paine National Historical Association in New Rochelle.
4) See Dyck and, more generally, Schlereth.

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