



"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

WHITE PAPERS

THE ALIENS ARE COMING: JOHN ADAMS AND THE FEDERALIST ATTACK ON THE FIRST AMENDMENT

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[This paper is the basis of an expanded version that is now Chapter One in *Silencing the Opposition: Government Strategies of Suppression* (State University of New York Press, 2011). The book also contains chapters on Lincoln's suspension of habeas corpus, the suppression of unions and suffrage movement, the red scares of the 20s and 50s, the Vietnam War, and restrictions resulting from the attacks of 9/11.]

This story revolves around one of the major characters on the American stage: Alexander Hamilton, born a bastard in the Bahamas, and rising to become George Washington's aide-de-camp, speech writer, and Secretary of the Treasury. As one of the writers of *The Federalist Papers*, he was in the center of the fight for the ratification of a new constitution, though his arrogance sometimes retarded the process. He opposed adding a bill of rights to it on the grounds that listing specific rights would mean anything not on the list would be fair game for the federal government to usurp. Hamilton wanted a strong central government to provide for "one great American system," as he called in *The Federalist Papers*. As we shall see, he would take extra-constitutional measures to make sure his party ran that system and to protect against "inevitable maladies like sedition and insurrection."^[1]

Hamilton was forced to share the stage with other political players. John Adams, noted lawyer and founders' founder, was a delegate to the Continental Congresses of 1774 through 1777. He wrote the 1779 constitution for the state of Massachusetts. He served as a diplomat to Europe from 1778 through 1788. His first assignment was to facilitate the treaty that Benjamin Franklin had negotiated with the French. He would leave just before the French Revolution began. He was the first Vice President of the United States serving under George Washington and facing in the cabinet his sometimes nemesis Thomas Jefferson, the man who would end his dream of a second term in the important election of 1800. In his ample free time as Vice President, Adams wrote a treatise defending the American system of government as vastly superior to the one the French had established after their revolution. The treatise offended Jefferson, who defended the French Revolution and dissolved his already icy relationship with Adams. In the election of 1796, the relationship between Jefferson and Adams became even more hostile, when Adams' cousin Sam, the governor of Massachusetts, endorsed the candidacy of Jefferson for president in an attempt to unite the Anti-Federalists into a new Democratic-Republican party.

Gentleman farmer and inventor, Thomas Jefferson, a states' rights Republican-Democrat, penned the Declaration of Independence, served as governor of Virginia (1779-81), was appointed diplomat to the Congress in Europe from 1784 to 1785 where he assisted Franklin and Adams, then replaced Franklin as minister to France from 1785 to 1789, leaving when the French Revolution began. During this latter period, he regularly wrote to his mentee James Madison instructing him about the ratification process and the need for a bill of rights once the Constitution was approved.^[2] He wrote to David Humphries on March 18th, 1789:

I am one of those who think it a defect that the important rights, not placed in security by the frame of the constitution itself, were not explicitly secured by a supplementary declaration. There are rights which it is useless to surrender to the government, and which yet, governments have always been fond to invade. These are the rights of thinking, and publishing our thoughts by speaking or writing...

Jefferson's concern for the passage of the Bill of Rights was understandable given his long involvement in its evolution. He had written to Madison on December 20th, 1787, "A bill of rights is what the people are entitled to against every government on earth, general or particular." While our Ambassador to France, Jefferson continued to remain active in the debate, often using Madison as his messenger. He began by convincing Madison that a bill of rights was essential. Jefferson wrote "To Madison" from Paris on November 18th, 1788, "As to the bill of rights however I still think it should be added..." Madison's conversion to this position came in February of 1789 when he almost lost a House race to James Monroe, then a protégé of Patrick Henry's.

Jefferson also wrote "To G. Washington," from Paris on November 4th, 1788, "I am in hopes that the annexation of a bill of rights to the constitution will alone draw over so great a proportion of the minorities, as to leave little danger in the opposition of the residue..." On December 21st, 1788, he wrote to Francis Hopkins the same sentiment—that those opposed to the ratification so recently would now come over to support it once a bill of rights was passed.

In a letter to Madison on March 15th, 1789, Jefferson made a very important point that has direct bearing on the doctrine of original intent. He said he supported a bill of rights because of the power it gave to the judicial branch. The legislative branch achieved its power through the legislation it passed; the executive branch had wide ranging powers to enforce laws, draft treaties, and administer the government. But Jefferson wisely and prophetically noted that the judicial branch's power rested on sand. Thus, a clearly stated bill of rights was essential if the court system, and particularly the Supreme Court, was to have anything to interpret at all. Even with a bill of rights, it would later take John Marshall's brilliant decision in *Marbury v. Madison* to establish the Supreme Court's power to review legislation to determine if it passed constitutional muster. But that ruling would have to wait until after the Alien and Sedition crisis in which Jefferson's motives would be called into question. At the behest of George Washington, Jefferson

became the first Secretary of State in late 1789 under the new Constitution. At the end of 1793, he retired to his home in Virginia. In 1796, he was elected Vice President under John Adams, with whom he strongly disagreed on immigration policy. And that is where our story begins.

These three, Hamilton, Adams and Jefferson, would come to represent different perspectives on the immigration crisis that rocked the nation from 1796 to 1800. The crisis drew attention away from the forced immigration of slaves, some of whom served on Master Jefferson's plantation, and one of whom, Sally Hemmings, was the mother of one of Jefferson's children. During these years of crisis, many slaves were imported from West Africa to join a burgeoning population centered mainly in the South. That, however, is not the topic of this paper because the vast majority of aliens who were bound into servitude arrived before 1790.^[3]

My charge is to focus on the laws that Congress passed specifically aimed at French émigrés. Jefferson would be the most tolerate of these immigrants and Hamilton, because of their threat to his party, the least tolerant, with Adams leaning toward Hamilton's position. To what extent these attitudes were a product of Jefferson's and Adam's stays in France is a matter of speculation; however, their service in France gave them a credibility with the national audience that Hamilton did not enjoy. On the other hand, Hamilton could claim he was uncorrupted by the French, implying that Adams and particularly Jefferson were infected with radical thinking.

THE DEVELOPING CRISIS

When John Adams took the oath of office on March 4, 1797, the country was already in a deep crisis with France. The Federalist Party had retained its majority in the Senate and House; most of its members were more loyal to Hamilton than to Adams.^[4] The Federalists were strengthened when the United States was seriously affected by a war between England and post-revolutionary France early in John Adam's presidency. Leery of John Jay's treaty with England, the Directory of France, a five-department executive committee resorted to seizing American ships trading with England because France suspected an Anglo-American alliance. The first wave of immigrants from France were those uprooted by the revolution and favorable to the crown. They told tales of the reign of terror spreading fear that French radicalism could cross the Atlantic and infect America. The French Revolution, which began with the fall of the Bastille prison on July 14, 1789, had by 1794 become a bloodbath that even its instigators could not escape. The conservative King Louis XVI and his wife, Marie Antoinette, had been beheaded, and so had the radical Robespierre.

In his eighth and last "annual message" to Congress of December, 1796, George Washington warned that "neutrality is not a sufficient guard against the depredations of nations at war."^[5] He then called for strengthening of the navy. On January 19, 1797, Washington noted that relations with France had deteriorated further due to activities of their cruisers in the West Indies.^[6] In his Farewell Address, perhaps sensing the drift of the Federalist Party, Washington warned of zealous partisanship and foreign entanglements.

Soon after his Inaugural, Adams sent a new minister to France bearing an olive branch; the French kicked him out of the country. This move, claimed Adams, had "inflicted a wound" which Adams would seek to "heal."^[7] However, since Adams had retained Washington's cabinet, Jefferson and Hamilton had free range to undermine his authority. The first excuse came with the second wave of immigrants from France, a propagandizing force on behalf of the revolution. Reverend Jedidiah Morse claimed the "Illuminati" among the aliens were secular atheists loyal to Jefferson.^[8] The Federalists suspected that the influx was bringing a host of Jacobin^[9] sympathizers to foment revolution and to act as French agents in the anticipated conflict. Morrison reports that the President of Yale saw "our wives and daughters victims of legal prostitution; soberly dishonored; speciously polluted; ...our sons become the disciples of Voltaire, and the dragoons of Marat."^[10]

Allegedly, the Jacobin revolutionaries were prepared to spread a reign of terror from nation to nation. At the end of May, Adams commissioned another set of envoys, Charles Pinckney, Francis Dana, and John Marshall, for France. In June of 1797, the American Secretary of State reported that ships sailing the French flag commandeered 300 U.S. vessels. Think of the panic and the rhetorical power of the Federalist narrative. The American public had been softened by loyalists, alienated by revolutionaries, and persuaded by British leaders that the French were pure evil. These fears were given a philosophical justification in many treatises, most notably Edmund Burke's *Reflections on the Revolution* in France, which became a primer for those rallying to stem the radical tide. When the French threatened to hang any Americans found on captured British ships, Adams responded with a call for strengthening national defense.

Aside from the real threat, there was a political threat. Hamilton was quick to realize that second-wave immigrants almost unanimously supported his political opponents in the Democratic-Republican Party of Thomas Jefferson. The Federalists perceived a threat to the sovereignty of the United States in the all-but-certain war with France. It was not difficult for them to make this case and sell it to the public especially when the French seemed in no mood to compromise. In his "First Annual Address" of November, 1797, Adams tried to pour oil on the troubled congressional waters by asking that his envoys be given a chance to restore the peace.

In December, new French decrees against neutral vessels went into effect. In February, 1798, the French attacked and burned vessels in Charleston harbor. On March 19, Adams informed the Congress that a peace mission had failed: "I perceive no ground of expectation that the objects of their mission can be accomplished..." Adams concluded his message solemnly: "In all your proceedings it will be important to manifest a zeal, vigor, and concert in defense of the national rights proportioned to the danger with which they are threatened."^[11] To the horror of Adams, Jefferson, and the nation at large, the envoys revealed in April, 1798, that French agents, dubbed X, Y, and Z, had demanded tribute from the United States. Despite the cry for war and to the dismay of Hamilton, Adams invoked Washington in announcing a policy of neutrality.

Throughout this period, Federalist leaders held secret meetings to plot the fate of their party; they carefully monitored the press and encouraged their friends to publish supportive articles. Unfriendly papers were scrutinized and enemies lists were drawn up. It was a moment in history when freedom of political expression in America could be called into question—on theoretical and practical grounds. The value of that freedom had, in fact, not been historically tested for it had been only seven years since the First Amendment had been added to the Constitution. During this undeclared war with France, Federalists not unnaturally feared disaffected aliens would try to de-stabilize the national

government, and those aliens seemed certain to swell the ranks of the Democratic-Republican opposition to Federalist political power, especially when one considers that many Democratic-Republicans were either Irish or French at birth. No doubt the Hamiltonians, who were concentrated in New York and New England, wanted to *preserve* a Federalist America. Thus, an ulterior motive emerged that put the spur to the Federalist propaganda horse: they wanted to keep their party in power.

They began by identifying the threat in vivid terms. Federalists claimed internal subversion by Jacobins was weakening America's resolve for a war with France.^[12] Public pronouncements couched in extreme terms proved effective in drawing attention to threats and in gathering support to confront it. Jonathan Dayton, Federalist Speaker of the House of Representatives, caused consternation in 1798 by asserting that armies were massing in France, preparing to conquer the United States:

As to the means of invasion, it was known that there were already collected upon the coasts of France, bordering upon the English Channel, a numerous army which, in gasconading style, was called the Army of England. It was known that there were also collected and collecting at various ports in that quarter, ships of war and transports of all descriptions.^[13]

The scenario is not difficult to imagine in a world confused by conspiracy and intrigue. Nonetheless, it was simply not true. Armies of Revolutionary France did, in fact, invade neighboring European states to spread the Revolution. French Territory in the North America could serve as a launching pad for an invasion of the United States. The facts, reported in the newspapers, helped give the assertions of the Hamiltonian Federalists credibility with the mass of voters, the very group most likely to go over to the Democratic-Republican Party in the next election.

This context also allowed the Federalists to exaggerate a minimal threat into a significant crisis. For the Hamiltonians, the example of the Democratic-Republican newspaper *Aurora* "proved" that sedition was rampant throughout the country. The *Aurora* was a Philadelphia paper that supported the Jeffersonians and was highly critical of the Adams administration. This paper often portrayed the President as imperial. It also called the motives of Hamilton into question not only on the editorial page but in regular reporting. During congressional debate Representative Long John Allen remarked that "liberty of the press and of opinion is calculated to destroy all confidence between man and man; it leads to a dissolution of every bond of union."^[14] Other Federalists accused the *Aurora* of sedition, and claimed that the press in general frequently instigated disloyalty toward the government.

Once the rhetorical context was established, the Federalists moved to quash the free speech of immigrants and the sedition of the press by proposing alien and sedition legislation.^[15] During the debates, Democratic-Republicans were fair game. For example, Federalist Jonathan Dayton rose to rebut a speech by Albert Gallatin, a Democratic-Republican leader who had originally come to the United States from Switzerland. Dayton himself was known to be a moderate Federalist, so his insinuations concerning Gallatin's foreign origin and his presumed friendliness to European radicalism were all the more credible. Said Dayton:

And why should that gentleman [Gallatin] be under no apprehension? Was it that secure in the perfect coincidence of the principles he avowed with those which actuated the furious hordes of democrats, which threatened the country with subjugation, he felt a confidence of his own safety, even if they should overrun ... the states? He might indeed contemplate an invasion without alarm ... he might see with calmness ... our dwellings burning....^[16]

When Congressman Livingston objected that the new laws required "no indictment; no jury; no trial ... no statement of accusation," he was answered with the claim that the insidiousness of French intrigue made these objections irrelevant. Federalist Congressman Otis claimed the laws were necessary because the French had pushed their intrigues into some of the first offices of government. The allusion to Jefferson's State Department was unmistakable.

The Federalists increased the sense of danger from infiltration by pointing to the "outspoken sedition" of certain Democratic-Republicans, who were growing in number. Federalist Congressman H. G. Otis, later to head the ill-fated Hartford Convention of 1812 which called on New England to secede, said in reply to a Democratic-Republican colleague:

The gentleman ... vociferates for the evidence of plots and conspiracies against the government.... If the gentleman insisted upon evidence of seditious dispositions in our country, I would refer him to his own speech.

These early rhetorical successes gave the Hamiltonians the ability to initiate legislation. By 1798 the Federalists had already raised a large standing army and gained control of it by pushing Hamilton to the position of acting commander. Adams approved a new Department of the Navy including the revived Marines Corps. He ordered merchant ships to be armed; eventually fourteen American war ships were commissioned and 200 other vessels took out letters of marque for reprisals against the French. The culmination of the Federalist campaign came with the passage of the Alien and Sedition Acts in July of 1798. Debate on the Acts in the House of Representatives was marred by both physical violence and slander, but it did surface evidence of France's subversion. French Minister Adet had come to America to influence the election of 1796; botanist Michaux engaged in espionage. Thus, in 1798, President Adams to refused allow any more academics from France to enter the country. He could not stop French agents who were working on the western frontier to foment rebellion. Nor could he stem the tide of Irish refugees fleeing their failed efforts at freedom.

THE ALIEN AND SEDITION ACTS

The Democratic-Republicans were able secure a few modifications in the laws before they were passed because a few moderate Federalists crossed over on crucial votes. For example, moderates succeeded in inserting a sunset provision for March 3, 1801, the day before the next Inaugural. Referring to the famous case of publisher John Peter Zenger, they included language assuring that the truth could be used as a defense in sedition trials. And they excluded federal judges from the law. Nonetheless, the stringent laws were passed over most of their objections, parliamentary maneuvers, and amendments. For example, the first roll call in the House was on a motion to prevent a second reading

of the bill; it failed 47-36 on a nearly straight party vote.^[17] Federalists finally passed the Acts by only three votes, 44-41, with only one Democratic-Republican, Thomas Tillinghast, voting for the measure.^[18]

The Alien and Sedition Acts included the following summarized provisions:

Naturalization Act: No alien shall be admitted to citizenship unless he has resided within the United States for at least fourteen years. No native, citizen, subject, or resident of a country with which the United States is at war shall be admitted to citizenship.

Alien Act: The President may order all such aliens as he shall judge dangerous to the peace and safety of the United States to depart.

Alien Enemies Act: When war is declared or invasion threatened, all natives, citizens, denizens, or subjects of the hostile nation or government, being males of the age of fourteen years and upwards, who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured and removed, as alien enemies.

Sedition Act: Any persons combining or conspiring with intent to oppose any measure or measures of the government of the United States shall be liable to fines up to \$5,000 and imprisonment up to five years. Any person writing, uttering, or publishing any false, scandalous and malicious writing or writings against the government, the Congress, or the President shall be liable to fine up to \$2,000 and imprisonment up to two years.

The Acts were clearly violations of the First Amendment, though they were never reviewed by the Supreme Court.^[19] The "Naturalization Act" extended from 5 to 14 the number of years of residence required before full U.S. citizenship could be granted. The *Act Concerning Alien Enemies* authorized President Adams to order the expulsion of "dangerous" aliens during peace time. The "Act Respecting Alien Enemies" authorized the president to apprehend, restrain, secure, and remove enemy aliens during time of war *or undeclared hostilities*.^[20] The "Sedition Act" prohibited conspiracy against the U.S. Government and also prohibited writing, printing, uttering, or publishing false, scandalous, and malicious writings against the U.S. Government.^[21] Indicted offenders fell into three categories: 1) figures associated with Democratic-Republican newspapers, 2) leading figures of the Democratic-Republican party, and 3) other individuals who were a nuisance to the Federalists.

Luckily, the laws were used less often than they might have been. About two dozen persons were arrested under the laws, with 15 or more being indicted. A sifting of the historical evidence indicates that only 11 cases came to trial,^[22] and in ten of them, the accused was found guilty of the charge. Perhaps the most serious action was the arrest of Congressman Matthew Lyon of Kentucky in October, 1798, under the provisions of the Sedition Act.^[23] He became the first member of Congress convicted of a crime while in office. In the ensuing election, he was re-elected from his jail cell,^[24] and when Federalists tried to vote to expel him from the House, the Democratic-Republicans were successful in blocking the move.

A second case of note concerned the actions of a Philadelphia Quaker, George Logan, who, with no official governmental authorization, journeyed to France to work for peace in the midst of the quasi-war. In response, the Federalists passed a law, the Logan Act, which prohibited private citizens from initiating diplomacy with foreign governments. It is still in force today though often ignored by such unofficial diplomats as Jesse Jackson, Jimmy Carter and Ramsey Clark.

The flush of legislative victory whetted the Hamiltonian's appetite for more. By the end of 1798, they had passed over 20 laws which, among other items, abrogated all treaties with France, expanded the army, armed sea vessels, and authorized attacks on French vessels on sight. To assuage this appetite, Adams nominated former President George Washington for Commander of the Army, with Hamilton second in command. In his acceptance letter, Washington remarked:

The conduct of the Directory of France toward our country, their insidious hostility to its Government, their various practices to withdraw the affections of the people from it, the evident tendency of their acts and those of their agents to countenance and invigorate opposition, their disregard for solemn treaties and the laws of nations, their war upon our defenseless commerce, their treatment of our ministers of peace, and their demands amounting to tribute could not fail to excite in me corresponding sentiments with those my countryman has so generally expressed in their affectionate address to you.^[25]

Hamilton's hand is evident in Washington's prose. Most Federalists understood him to be the real commander with the aging Washington serving only as a figurehead. In fact, Hamilton managed to talk Washington into openly supporting the Sedition Law, while Hamilton personally demurred on the issue. Hamilton's political strategy paid off in the election of 1798; the public kept the Federalists in power with strong majorities.

The Federalists' actions and proposals were transparently unconstitutional; their agenda comprised an extreme threat to personal freedoms. Congressman Robert Harper of South Carolina then justified a restriction on freedom in the face of internal subversion. As the author of the Sedition Bill and former Chairman of the House Ways and Means Committee, he brought considerable credibility to the debate. He developed a scenario of collapse which revealed the essence of Federalist fears: philosophers of the French Revolution, who were in every country, were paving the way for Jacobins who followed closely in their wake, bent on seizing power by violent means—means that had been used during the "reign of terror" in France. Harper put it this way:

Philosophers of [the French] revolution exist in all countries.... They advance always in front and prepare the way by preaching infidelity, and weakening the respect of the people for ancient institutions.... The Jacobins follow close in the train of philosophers, and profit by their labors. This class is composed of that daring, ambitious, and unprincipled set of men, who possessing much courage, considerable talent, but no character, are unable to obtain power, the object of all their designs, by regular means, and therefore, perpetually attempt to seize it by violence.

Pamphleteers and newspapers repeated these themes so that in a few months the entire country was exposed to expressions of fear of French Jacobins. The synergy between the Hamiltonians and the press at this juncture should not be underestimated. The press supplied the accepted facts for the Hamiltonians' faulty logic. Then the press reported the Hamiltonian claims to the public further reinforcing their fears and planting premises that Federalists could use in building persuasive enthymemes on which to campaign. Though it eventually failed, it was in the short run a very effective rhetorical campaign.

Adams reported in his "Second Annual Message" that matters continued to deteriorate with France. That nation had failed to rescind its law allowing attacks on neutral vessels. "Nothing," claimed the President, "is discoverable in the conduct of France which ought to change or relax our measures of defense."^[26] Speaking for the Senate, President Pro Tem John Laurance wrote back, "We are of opinion with you, sir, that there has nothing yet been discovered in the conduct of France which can justify a relaxation of the means of defense adopted during the last session of Congress..."^[27] The House concurred in this opinion. The defense build up continued.

THE COUNTER ATTACK

The introduction of the Alien and Sedition Bills served as wake-up call for the Democratic-Republican Party, which began to rally support in opposition to the measures. After the passage of the bills, Vice President Jefferson wrote a series of resolves that were approved by the Kentucky legislature in 1799. It reads in part:

Resolved, that the several States composing the United States of America are not united on the principle of unlimited submission to their general government; but that by compact under the style and title of a Constitution for the United States and of amendments thereto, they constituted a general government for special purposes, delegating to that government certain definite powers, reserving each State to itself the residuary mass of rights to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force: That to this compact each State acceded as a State, and is an integral party, its co-States forming, as to itself, the other party: That the government created by this compact was not made the exclusive or final judge of the extend of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers; but that as in all other cases of compact among parties having no common Judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.

Madison penned the Virginia Resolves which appealed for the preservation of the free marketplace of ideas as well as constitutional freedoms. While invoking states' rights, Jefferson and Madison spoke of the danger of increased presidential power. Madison closed with an argument for free speech and press. Soon petitions were arriving from around the country demanding the repeal of the laws. Nonetheless, early in 1799, the House voted 52 to 48 to extend the Alien and Sedition Acts, while Adams sent another warning shot across the French bow by sending Rufus King to London to negotiate a trade treaty with Great Britain and Russia. This action caught the attention of Talleyrand, who pleaded for a renewal of negotiations between his government and the United States. On February 25, 1799, Adams asked the Senate to approve the nominations of Chief Justice Oliver Ellsworth, former governor Patrick Henry, and the U.S. Minister to the Hague, William Vans Murray, so that they might negotiate a treaty with France.

Meanwhile, Madison supported Jefferson's view with a treatise of his own. It too supported states' rights, and argued that the new laws gave the president too much power: "The people not the government possess absolute power.... In the United States, the executive magistrates are not held to be infallible, nor the legislature to be omnipotent..." Despite the campaign of misinformation propagated by Federalist papers, he concluded that freedom of expression was essential to the workings of democracy:

The security of freedom of the press requires, that it should be exempt, not only from previous restraint by the executive, as in Great Britain, but from legislative restraint also; the Act will make us unfree because the people will be compelled to make their election between competitors, whose pretension they are not permitted, by the Act, equally to examine, to discuss, and to ascertain.

These three pillars—states' rights, limited presidential power, and free speech—were the supports of the Democratic-Republican counter-attack on the Federalists.

However, political leaders were not the only ones to take on Hamilton and the Federalists. In advance of Jefferson and Madison, opposition newspapers roused the public against the Alien and Sedition Acts. *Greenleaf's New Daily Advertiser* published an attack on the Sedition Bill while the ink from the President's signature was still wet. On Wednesday, June 13, 1798, it carried these words:

If the constitution of the United States was not considered by the majority of the house of representatives as a mere dead letter, or a piece of musty parchment, they would never have ventured to bring in a bill so directly contravening one of the most essential articles of freedom, and as clearly defined as any other clause in the bill of rights, namely, liberty of speech, printing and writing, all of which will not merely be infringed, but wholly annihilated, should this nefarious bill pass into law.

Perhaps the most outspoken was the editor of the *Aurora*, who wrote on July 3, 1798:

What is meant by defaming a law is beyond my comprehension. To laugh at the cut of a coat of a member of Congress will soon be treason; as I find it will be to give a Frenchman a dinner or a bed, as soon as this bill passes.

The *Boston Gazette* joined the battle on July 9, 1798:

The Editor of the *Aurora* was [recently] arrested, on a warrant from Judge Peters of the Federal Circuit Court, on a charge of libelling [sic] the President, and the Executive Government in a manner tending to excite Sedition, and opposition to the laws, by sundry publications and republications... The period is now at hand when it will be a

question difficult to determine *whether there is more safety and liberty to be enjoyed at Constantinople or Philadelphia.*

Southern papers also took up the call for the repeal of the acts. *The Norfolk Herald* of September 1, 1798, not only opposed the acts, but applauded mass action against them:

The real friends to the liberties and happiness of America will rejoice at the decided part which the people of Virginia have taken against the Alien and Sedition bills. In the large and respectable county of Goochland, the people met on Monday last to consult on the present crisis of American affairs, and adopted by almost an unanimous vote, Resolutions, expressive of their strongest disapprobation of the late acts of Congress and the President. There was a very full meeting consisting of about four hundred, of these not more than twenty or thirty were against the Resolutions. —They also voted instructions to their delegates in the state legislature, requesting them to move, in the next session of the Assembly, a Remonstrance to Congress, against the late obnoxious acts of government, or to support any other constitutional measure which may be deemed more effectual, to vindicate the liberties of Speech and the Press, and to restore the trial by jury. —BRAVO!

Congressman Harper was so upset by protests in South Carolina that he introduced legislation to print the Alien and Sedition Acts and distribute them nationwide.

Artists, particularly poets and song writers, also saw the Alien and Sedition Acts as threats to freedom. They used their crafts to stir the public against the new restrictions. In fact, many scholars believe the election of 1800 was the first in which campaign songs were used to ask citizens to vote for a specific candidate. For example, in response to the rather martial lyrics of the Federalists' "Yankee Doodle," the Jeffersonians sang of attacking "men in pow'r [who] cry 'sedition.'" Other lyrics praised Jefferson and the action he would take if he were elected:

*If you peace and freedom love,
Act with circumspection,
Ev'ry foe to these remove,
At your next election,
Choose for chief Columbia's son,
The immortal Jefferson.*

*He will ever-ever-ever stand,
Watching o'er your freedom.*

One of the most devastating attacks on the Federalists' repressive policies came in a poem placed in the *Boston Gazette*. It appeared on September 17, 1798, the day Benjamin Edes, the *Gazette's* editor, resigned:

*Since we are forbid to speak, or write
A word that may our BETTERS bite,
I'll sit mum-chance from morn to night;
But pay it off with THINKING.
One word they ne'er shall fish from me
For Master Rawle, or Charley Lee;
Yet, if they'll let my thoughts be free
I'll pay them off with THINKING.
When George began his tyrant tricks,
And Ropes about our neck would fix,
We boldly kicked against the Pricks
Nor sat mum-chance, a THINKING.
We freely spoke, and freely thought,
And freely told him what we sought.
Then freely seiz'd our swords, and fought
Nor dreamed of silent THINKING.
If Hancock and great Washington,
Had nothing said, and nothing done,
His race the tyrant would have run,
Whilst we were mum a THINKING.
Had Dickenson not dar'd to write,
Had common sense not spit his spite,
Our soldiers had not dar'd to fight,
But set down mum, a THINKING.
We swore that thought and swords were free,
And so the Press should ever be,
And that we fought for Liberty,
Not Liberty of THINKING,
But Liberty to write or speak,
And vengeance on our foes to wreak;
And not like mice, in cheese, to squeak,
Or, sit down mum, a THINKING.
Again on Constitution Hill,
We swore the sovereign people's will
Should never want a press or quill,
Or tongue to speak as THINKING.
That still we're sovereign who'll deny?
For though I dare not speak, Yet I
ONE SOVEREIGN RIGHT, will still enjoy*

When the rhetorical counter-attack took hold in 1799, Democratic-Republicans did well in the off-year elections.

FALL FROM POWER

The decline in the popularity of the Federalists was marked by a flurry of desperate activity. Hamilton protested vociferously when President Adams began peace negotiations with France in February of 1799.^[28] Jefferson maintained communication with France's minister of foreign affairs, Tallyrand, in an effort avoid war; Tallyrand did not want to drive America into the British camp. Hamilton countered by expanding the army and the Federalists succeeded in putting him in total command.^[29] He used his authority the next month to crush Fries' Rebellion in Pennsylvania.^[30] During the summer of 1799, Hamilton and the cabinet delayed the departure of the peace mission. He then worked to replace the conciliatory Adams with the more bellicose Charles Pinckney as nominee of the party. In his "Third Annual Address" of December 3, 1799, Adams weakly endorsed the quashing of the rebellion, then called on Congress to investigate ways by which the judiciary should be re-structured to assure that citizens were not oppressed in the future. He called on Congress to give his peace mission a chance to succeed.^[31] A few weeks later, the nation was further sobered by the death of Washington.

In this atmosphere, more and more Americans began to question what the Federalists had been up to. A lingering suspicion of Federalist elitism was reinforced by Hamilton's arrogance and the rhetoric of his followers. Furthermore, the majority of Americans were unlikely to continue his efforts to strengthen the federal government at the expense of the states. To them, Jefferson and his Republicans seemed more open to the common man and certainly more loyal to the states.

The sedition trials also riled the public. One noted case was the Hamiltonians' attempt to convict Thomas Cooper, an anti-Federalist newspaper publisher, of sedition.^[32] Cooper had been an editor of the pro-Republican *Gazette* which was distributed in Sunbury and Northumberland, Pennsylvania.^[33] When Cooper was criticized for his views, he responded by printing a handbill for which he was charged with seditious libel. Specifically, Cooper accused President Adams of "a stretch of authority which the Monarch of Great Britain would have shrunk from; and interference without precedent, against law and mercy!"^[34] At the trial Cooper defended himself before Associate Justice Samuel Chase of the Supreme Court. In the course of the trial, Cooper was accused of making false statements that insulted the President and thereby the citizens of the country.^[35] The prosecution suggested that if such libels were allowed to go unchecked they might foment revolution.

Cooper defended himself on standard freedom of expression grounds. He claimed that our political system was based on free and open debate; that the claims he made were true; and that the public had a right to know about the conduct of political officials. The prosecution responded that Cooper's testimony was damning and that the Sedition Law was written precisely to take care of problems like Cooper. The Federalist Court fined Cooper \$400 and sent him to jail for six months.

Another victim of the law was James Callendar, who was tried in Richmond, Virginia. Because he had written for the *Aurora* of Philadelphia, Callendar moved to Virginia trying to avoid prosecution.^[36] But Callendar could not restrain himself regarding the impending election of 1800. His pamphlet favoring Jefferson attacked President Adams, for which he was brought to trial in May of 1800. The most serious claims made by Callendar seem to be that Adams was trying to close the frontier, that he was an "aristocrat" who "proved faithful and serviceable to the British interest."^[37] Not surprisingly Associate Justice Chase relished the chance to come to Richmond to hear the case. Callendar was defended by prominent Virginia Republicans including William Wirt and Philip Nicholas, who at the time was the attorney general of Virginia. They argued that what Callendar had written in his pamphlet was true and that the Sedition Law was unconstitutional. When Judge Chase disallowed the argument, the defense team refused to continue. The Federalist jury found Callendar guilty.

Their trials reveal the two-edged Federalist media strategy. First, they coordinated their efforts with editors and publishers loyal to their cause, a tactic that had worked well for them during the ratification of the Constitution. Second, they attempted to suppress Republican newspapers using the sedition laws.

Despite the fact that the Federalists were able to deter another attempt to repeal the Alien and Sedition Laws in early 1800, their political control was broken and crumbled over the French crisis.^[38] Along with other grievances against the Federalists, many Americans resented the taxes that were imposed to support the military build up. American naval vessels won victories at sea, providing Adams with needed credibility and calming fears of an invasion. He quickly dismissed radicals McHenry and Pickering from the cabinet; both were in Hamilton's pocket and both had pushed for strict enforcement of the Alien and Sedition Laws. In May, Adams suspended sections of the act that had prohibited certain trade between the United States and France. Much to Hamilton's frustration, he then pardoned most of those who had participated in the insurrection in Pennsylvania. By the summer of 1800, the Federalist Party was divided between two groups, those supporting Hamilton and those loyal to Adams. In October, Hamilton accused Adams of "vanity without bounds," "disgusting egotism," "distempered jealousy," and "desultoriness of mind."^[39] When Hamilton's missive somehow got into the hands of Aaron Burr, he passed it on to Democratic-Republican newspapers. The public began to see in the Alien and Sedition Acts what Congressman Jonathan Livingston had predicted early in the debates over the Sedition Bill:

The President alone is empowered to make the law, to fix in his mind what acts, what words, what thoughts or looks, shall constitute the crime contemplated by the bill... He is not only authorized to make this law for his own conduct, but to vary it at pleasure, as every gust of passion, every cloud of suspicion, shall agitate or darken his mind.

The Democratic-Republicans won the election of 1800. The election struck a blow from which the Federalist Party would not recover.^[40]

The defeated President delivered his "Fourth Annual Address" on November 22, 1800, hinting that a treaty had been approved by both sides in Paris. In their replies, the House and the Senate demanded continued vigilance. On

December 15, 1800, Adams transmitted the finished treaty to the Senate. In January, having to choose between Jefferson and Burr, Hamilton threw the support of his party in the House of Representatives behind Jefferson on the 36th ballot, an act for which he would pay with his life. In February of 1801, just days before Jefferson's Inaugural, the Senate ratified the treaty with France, ending all pretense of a crisis. The Sedition Act expired by its own terms on March 3, 1801, just before Jefferson's inauguration.

The free press and such articulate writers as Jefferson and Madison defeated the Federalists in part by revealing how their actions, like those of Judge Chase, contradicted their rhetoric and constitutional principles. Federalist suppression of free speech was clearly in conflict with the goals of liberty and internal tranquility. Worse, their corruption of freedom of expression by using it to advance faulty claims came back to haunt them. Jefferson, in his Inaugural Address, expressed the sentiments of what was by then the majority of the nation and the spirit of later responses to radicalism:

Let us, then, fellow citizens, unite with one heart and one mind. Let us restore to social intercourse that harmony and affection without which liberty and life itself are but dreary things. And let us reflect that, having banished from our land that religious intolerance under which mankind so long bled and suffered, we have yet gained little if we countenance a political intolerance as despotic, as wicked, and capable of as bitter and bloody persecutions.... Every difference of opinion is not a difference of principle. We have called by different names brethren of the same principle. We are all Republicans, we are all Federalists. If there be any among us who would wish to dissolve this union or change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it.

Jefferson immediately pardoned all who had been convicted or who were awaiting trial under the Acts.^[41] The Federalist assault on the First Amendment ended with one of its strongest proponents becoming President. Jefferson had learned that when the threats become real for the public, the radical segment instigating legislation and extra-constitutional measures can seize the moment and advance its agenda. Unless the perception of the threats is sustained, however, the agenda will eventually fall victim to a resurgence among the defenders of constitutional rights. In this case, several rhetorical tactics ranging from logical fallacies to synergy with the media were used to enhance the public's perception of a threat from a foreign foe. Eventually, those employing rhetoric on behalf of the constitutional principles prevailed, but only because the historic context changed. That should give us pause, for had the context not changed, one wonders what would have become of our liberties.

ENDNOTES

- [1]. As quoted in Thomas Fleming, *Duel: Alexander Hamilton, Aaron Burr and the Future of America* (New York: Basic Books, 1999), p. 71.
- [2]. Jefferson also made clear his bias toward an agricultural society. He wrote to Madison that "The small landholders are the most precious part of a state." James Morton Smith, ed., *The Republic of Letters, The Correspondence between Thomas Jefferson and James Madison, 1776-1826*, 3 vols. Vol. 2 (New York: 1995), pp. 391.
- [3]. The Federal Census Report of 1790 found a total of 657,527 slaves in America, mostly residing in the South. For example, North Carolina, South Carolina, and Maryland each had just over a 100,000 slaves, while Virginia had nearly 300,000. New York led the way in the North with about 21,000. However, between 1790 and 1800, the date of the next census and including the time period of this study, the total number of slaves grew to 893,041. How much of that almost 250,000 gain is due to births and how much is due to forced immigration is difficult to determine. It is clear from the available data, however, that much of the increase was due to importation of slaves. Slave populations in the North either remained steady, as in New York, or declined where emancipation was instituted, as in Massachusetts and New Hampshire. In the South during this decade, large increases in the number of slaves occurred in Virginia (about 40,000), North Carolina (about 30,000), South Carolina (about 45,000), while some slaves were moved into such new states as Tennessee. The best source for this data is the Inter-University Consortium for Political and Social Research, *Study 00003: Historical Demographic, Economic and Social Data, U.S. 1790-1970*, (ICPSR: Ann Arbor, 1998).
- [4]. For an analysis of the roots of Federalist thinking see Craig R. Smith and Scott Lybarger, *The Ratification of the Bill of Rights, 1789-91*, (Long Beach: Center for First Amendment Studies, 1991), Chapter 2.
- [5]. George Washington, "Eighth Annual Address," *Messages and Papers of the Presidents*, ed. James D. Richardson, Vol. 1 (Washington, D.C.: Bureau of National Literature and Art, 1907), 201.
- [6]. Richardson, *Messages and Papers*, 210-211.
- [7]. John Adams, "Special Session Message," Richardson, *Messages and Papers*, 235-36. This message to the House and Senate was sent on May 16, 1797. In reply, the Senate sought instructions on how to increase defense readiness and complained about "the depredations on our commerce, the personal injuries to our citizens." "Reply of the Senate," Richardson, *Messages and Papers*, 240.
- [8]. Samuel Elliot Morrison and Henry Steele Commager, *The Growth of the American Republic*, vol. I, (New York: Oxford University Press, 1962), 359.
- [9]. Gerald Malcolm Howat, *Dictionary of World History*, (London: Thomas Nelson and Sons Limited, 1973), 757.
- [10]. Morrison and Commager, *Growth of the American Republic*, 359.
- [11]. Richardson, *Messages and Papers*, 264.
- [12]. In fact, Hamilton regularly referred to Burr as "the most dangerous chief that *Jacobinism* can have." In Fleming, p. 181. Like many Federalists, Hamilton smeared the Democratic-Republicans with the alien name,

not unlike McCathysts a century and a half later.

[13]. Leonard W. Levy and Merrill D. Peterson, *Major Crises in American History*, Vol. I (New York: Harcourt, Brace and World, 1962), 200. Quotations that follow from the House debate over the Alien and Sedition Acts are from this source unless otherwise noted.

[14]. Levy and Peterson, *Major Crises in American History*, 28. Long John Allen was one of those involved in the fisticuffs that broke out during this debate.

[15]. See T. F. Carroll, "Freedom of Speech and of the Press in the Federalist Period: The Sedition Act," *Michigan Law Review*, 18 (1920): 615.

[16]. Levy and Peterson, *Major Crises in American History*, 199. By 1807 Dayton would become so frustrated at the ascendance of the Democratic-Republicans that he would join Burr in an attempt to overthrow the government.

[17]. Robert Williams, a Democratic-Republican, voted with the Federalists.

[18]. The legislation was revisited by the Congress the next year when an attempt to repeal failed. When the Federalist found themselves in a lame duck Congress near the end of 1800, they tried to write extension into the laws, but that failed.

[19]. These acts were directed primarily against anti-Federalist editors of French and English heritage, such as Thomas Cooper, Joseph Priestly, James Callender, Benjamin Bache, Count de Volney, and others. For further information on the Alien and Sedition Acts, see Frank M. Anderson, "The Enforcement of the Alien and Sedition Laws," *American Historical Association Reports: Annual Report for the Year 1912* (Washington, D.C.: American Historical Association, 1914), 113-126; Claude Gernade Bowers, *Jefferson and Hamilton* (St. Clair Shores, MI: Scholarly Press, 1925), Chapters 16 and 17. These Acts are reprinted in Henry S. Commager, *Documents of American History*, (Englewood Cliffs, NJ: Prentice-Hall, 1973), 175-178.

[20]. This act is in force (50 U.S.C. Sec. 21-24, 1982) with only one substantive change: states no longer have the jurisdiction to deal with enemy aliens.

[21]. The Alien and Sedition Acts were never reviewed by the Supreme Court. Justice William J. Brennan, Jr., observed in *New York Times Co. v. Sullivan*: "Although the Sedition Act was never tested in this Court, the attack upon its validity has carried the day in the court of history ... Jefferson, as President, pardoned those who had been convicted and sentenced under the Act ... stating: 'I discharged every person under punishment or prosecution under the sedition law, because I considered, and now consider, that law to be nullity...' The invalidity of the Act has also been assumed by Justices of the Court. Their views reflect a broad consensus that the Act, because of the constraint it imposed upon criticism of government and public officials, was inconsistent with the First Amendment" 376 U.S. 245, 276 (1962). See John Chester Miller, *Crises in Freedom: The Alien and Sedition Acts* (Boston: Little, Brown & Co., 1951), 193; William M. Malloy, "Annual Report for 1912" reprinted in *House Document No. 933, 63rd Congress, 2nd Session* (Washington, D.C.: Government Printing Office, 1914), 115-116.

[22]. Anderson, "Enforcement of the Alien and Sedition Laws," 120.

[23]. For a study of similar measures used during World War I, see Clark Kimball, "Patriots versus Defenders: The Rhetoric of Intimidation in Indiana During the First World War," eds. Thomas L. Tedford, John J. Makay, and David L. Jamison, *Perspectives on Freedom of Speech* (Carbondale: Southern Illinois University Press, 1987), 53-65.

[24]. In 1840 the fine imposed on Lyon was returned to his heirs. The fact that Federalists would actually jail a political opponent shows how strongly they acted when they felt threatened. Hamilton's grasp at control of the army was an example of the extra-legal maneuvering that can occur. See James M. Smith, *Freedom's Fetters* (Ithaca, NY: Cornell University Press, 1963), 185-186; Frank Luther Mott, *American Journalism: A History of Newspapers in the United States through 250 Years: 1690-1940* (New York: Macmillan, 1949), 149.

[25]. Washington to John Adams, July 13, 1798 in Richardson, *Messages and Papers*, 268.

[26]. Richardson, *Messages and Papers*, 272.

[27]. Laurance to John Adams, December 11, 1798 in Richardson, *Messages and Papers*, 276.

[28]. The parallel between Adams' level-headed approach to the French crisis and Eisenhower's approach to the Korean crisis is uncanny. Both men suffered severe criticism from the radicals in their own ranks.

[29]. In a letter to Theodore Sedgwick, Hamilton wrote that the militia of loyal states could not be counted on to restrain "a refractory and powerful state When a force has been collected, let them be drawn toward Virginia, for which there is an obvious pretext [that of strengthening border defenses in the Mississippi Valley], then let measures be taken to act upon the laws and put Virginia to the test of resistance." Hamilton to Theodore Sedgwick, February 2, 1799, ed. Henry Cabot Lodge, *The Works of Alexander Hamilton* (New York: G.P. Putnam's Sons, 1903), 340-342, quoted in Stephen G. Kurtz, *The Presidency of John Adams: The Collapse of Federalism, 1795-1800* (Philadelphia: University of Pennsylvania Press, 1957), 356.

[30]. In March 1799, a group of angry Pennsylvania Germans led by Fries, a militia officer, organized an attempt to rescue some of their outspoken allies who had openly defied the direct tax imposed by the Federalists. Federal marshals were prevented from incarcerating the men, skirmishes broke out, and General McPherson's Pennsylvania army was rushed to the scene. Kurtz, *Presidency of John Adams*, 358.

[31]. In Richardson, *Messages and Papers*, 290.

[32]. Cooper defended himself when he came to trial in 1800. Judge Chase's handling of the case was prejudiced against Cooper. In his speech to the jury, Cooper said, "We have advanced so far on the road to

despotism in this republican country that we dare not say our President is mistaken." Cooper was convicted, but eventually pardoned by Jefferson.

[33]. Thomas W. Benson, "Rhetorical Impasse: The Sedition Trials of 1800," *Southern Speech Communication Journal*, 31 (1966): 198.

[34]. As quoted in Benson, "Rhetorical Impasse," 198.

[35]. Benson, "Rhetorical Impasse," 199.

[36]. Benson, "Rhetorical Impasse," 202.

[37]. As quoted in Benson, "Rhetorical Impasse," 202.

[38]. The growth of the standing army and the direct tax also contributed to the downfall of the Federalists. Had they known that Spain had secretly given the Louisiana Territory to France, they might have sustained the crisis for another year or so.

[39]. John D. Stevens, "Congressional History of the 1798 Sedition Law," *Journalism Quarterly*, 43 (1966): 253.

[40]. In the election of 1802 only 39 Federalists survived in the House as against 103 Democratic-Republicans. Only 9 Federalist survived in the Senate as against 25 Democratic-Republicans.

[41]. See Eduard Gerard Hudon, *Freedom of Speech and Press in America* (Washington D.C.: Public Affairs Press, 1963), 48.