Order vs. Liberty

When Congress passed the Alien and Sedition Acts in 1798, it opened a heated debate about the limits of freedom in a free society.

By Larry Gragg

On July 4, 1798, the citizens of the capital city of Philadelphia turned out in large numbers to celebrate the nation's independence day. While militia companies marched through the streets, church bells rang, and artillery units fired salutes, members of the United States Senate were trying to conduct a debate on a critical bill. One senator noted "the military parade so attracted the attention of the majority that much the greater part of them stood with their bodies out of the windows and could not be kept to order." Once they resumed their deliberations, however, the Federalist majority succeeded in gaining passage of an implausible bill, one quickly approved by the House of Representatives and signed on July 14 by President John Adams.

Ironically, as senators celebrated the freedom they had won from Britain, they approved a sedition bill that made it illegal to publish or utter any statements about the government that were "false, scandalous and malicious" with the "intent to defame" or to bring Congress or the president into "contempt or disrepute." This bill, seemingly a violation of the Constitution's First Amendment free speech protections, had a chilling effect on members of the Republican Party and its leader, Thomas Jefferson, who admitted that he feared "to write what I think."

Support for this restrictive legislation had grown out of Federalist belief that the young nation was facing its gravest crisis yet, in the possibility of war with France and the spread of anti-immigrant feeling. The new law violated the beliefs of many Republicans, who regarded Federalists as reactionary defenders of privilege intent on bringing back the monarchy. Federalists saw their Republican opposites as irresponsible radicals eager to incite a social revolution as democratic as the one that had torn through France.

Nothing divided Federalist from Republican more than their response to the French Revolution. Republicans applauded the revolutionaries' destruction of aristocratic privileges, the overthrow of the monarchy, and the implementation of constitutional government. Yet, Federalists saw the same dramatic changes as the degeneration of legitimate government into mob rule, particularly during the bloody "Reign of Terror" when "counterrevolutionaries" lost their lives on the guillotine.

Federalist fears deepened as they watched the new French republican government encourage wars of liberation and conquest in Belgium, Switzerland, Holland, and the Italian peninsula. Rumors were rampant in 1798 about a possible French invasion of America, one that allegedly would be supported by American traitors and a population of French émigrés that had grown to more than 20,000.

The nation's rapidly growing immigrant population deeply troubled Federalists. One Pennsylvania newspaper argued that "none but the most vile and worthless" were inundating the country. William Shaw, the president's nephew, arguing that "all our present difficulties may be traced" to the "hordes of Foreigners" in the land, contended America should "no longer" be "an asylum to all nations." Federalists worried about the 60,000 Irish immigrants in the new nation, some of whom had been exiled for plotting against British rule. These malcontents, they argued, along with French immigrants, and a sprinkling of British radicals like the liberal theologian and scientist Joseph Priestley, presented a grave challenge to the nation. The Federalists feared that the extremist ideas of the dissenters would corrupt and mobilize the destitute.

The British government, even more terrified than the Americans that ideas from the radical French regime might spread, had been at war with France for five years, trying to contain it. Both nations had seized neutral American ships headed to their enemy's ports. President Adams initiated a two-pronged plan to stop the French
from seizing any further ships. He sent three emissaries to negotiate with the French government, and he worked to push bills through Congress to increase the size of the navy and army. Federalist revulsion at anything associated with France reached a peak in spring 1798 when word arrived in Philadelphia that three French agents, identified only as X, Y, and Z, had demanded a bribe from the American diplomats before they would begin negotiations.

Insulted by the French government, convinced that war was inevitable, and anxious over a "dangerous" alien population in their midst, Federalists in Philadelphia were ready to believe any rumor. They saw no reason to doubt the warning in a letter found outside the president's residence in late April. It supposedly contained information about a plot by a group of Frenchmen "to sit [sic] fire to the City in various parts, and to Massacre the inhabitants." Hundreds of militiamen patrolled the city streets as a precaution, and a special guard was assigned to the president's home. John Adams ordered "chests of arms from the war-office," as he was "determined to defend my house at the expense of my life."

In such a crisis atmosphere, Federalists took action to prevent domestic subversion. They supported four laws passed in June and July 1798 to control the threats they believed foreigners posed to the security of the nation and to punish the opposition party for its seditious libel.

Two of these laws represented the Federalist effort to address perceived threats from the nation's immigrant groups. The Alien Enemies Act permitted the deportation of aliens who hailed from a nation with which the United States was at war, while the Alien Friends Act empowered the president, during peacetime, to deport any alien whom he considered dangerous.

Although some historians acknowledge that there were legitimate national security concerns involved in the passage of the two alien acts, others conclude that the two additional pieces of legislation were blatant efforts to destroy the Republican Party, which had gained many immigrant supporters.

The Naturalization Act extended the residency requirement for citizenship from five to 14 years. For a few politicians, such as Congressmen Robert Goodloe Harper and Harrison Gray Otis, even this act was insufficient. They believed that citizenship should be limited to those born in the United States.

Apart from its limitations on speech, the Sedition Act, the last of the four laws, made it illegal to "unlawfully combine or conspire together, with intent to oppose any measure or measures of the government." While the First Amendment to the U.S. Constitution established that Congress couldn't pass laws "abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble," there had been little discussion about the amendment's precise meaning since its adoption seven years earlier.

In 1798 many Federalists drew upon Commentaries on the Laws of England written by Sir William Blackstone—the man considered by the framers of the Constitution to be the oracle of the common law—for their definition of liberty of the press. Blackstone wrote, "liberty of the press . . . consists in laying no previous restraints upon publications." However, if a person "publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity." In other words, if a person spoke or wrote remarks that could be construed as seditious libel, they weren't entitled to free speech protection.

According to the Federalists, if seditious libel meant any effort to malign or weaken the government, then the Republican press was repeatedly guilty. Republican papers, claimed the Federalists, such as the Philadelphia Aurora, the New York Argus, the Richmond Examiner, and Boston's Independent Chronicle printed the most scurrilous statements, lies, and misrepresentations about President Adams and the Federalist Party.

The president's wife, Abigail, complained bitterly about journalistic "abuse, deception and falsehood." Particularly galling to her were the characterizations of her husband in editor Benjamin Bache's Aurora. In April 1798 Bache called the president "old, querulous, Bald, blind, crippled, Toothless Adams." Bache, she argued, was a "lying wretch" given to the "most insolent and abusive" language. He wrote with the "malice" of Satan.
The First Lady repeatedly demanded that something be done to stop this "wicked and base, violent and calumniating abuse" being "leveled against the Government." She argued that if journalists like Bache weren't stopped, the nation would be plunged into a "civil war."

At the same time, Federalists were hardly models of decorum when describing Republicans. Their opponents were, one Federalist wrote, "democrats, mobocrats and all other kinds of rats." Federalist Noah Webster characterized Republicans as "the refuse, the sweepings of the most depraved part of mankind from the most corrupt nations on earth."

Although President Adams neither framed the Sedition Act nor encouraged its introduction, he certainly supported it. He issued many public statements about the evils of the opposition press. Adams believed that journalists who deliberately distorted the news to mislead the people could cause great harm to a representative democracy.

Letters and remarks of John and Abigail Adams made passage of a sedition bill easier, but the task of pushing it through Congress fell to Senator James Lloyd of Maryland and Congressmen Robert Goodloe Harper and Harrison Gray Otis. Although it passed by a wide margin in the Senate, the bill barely gained approval in the House of Representatives, where the vote was 44 to 41. To win even that small majority, Harper and Otis had to change the original bill in significant ways. Prosecutors would have to prove malicious intent, and truth would be permitted as a defense. Juries, not judges, would determine whether a statement was libelous. To underscore its political purpose, the act was to expire on March 3, 1801, the last day of President Adams' term of office.

Prosecutions began quickly. On June 26, even before the Sedition Act was passed, Supreme Court Justice Richard Peters issued a warrant for the arrest of Benjamin Bache. Bache, the most powerful of all the Republican newspaper editors, was charged with "libeling the President and the Executive Government in a manner tending to excite sedition and opposition to the laws." Less than two weeks later, federal marshals arrested John Daly Burk, editor of the New York newspaper Time Piece, for making "seditious and libelous" statements against the president. Neither faced trial, however. Bache died in Philadelphia during the yellow fever epidemic of September 1798, and Burk, who wasn't a citizen, agreed to deportation if charges were dropped. He then fled to Virginia to live under an assumed name.

During the next two years 17 people were indicted under the Sedition Act, and 10 were convicted. Most were journalists. Included among them were William Duane, who had succeeded Benjamin Bache as editor of the Aurora; Thomas Cooper, a British radical who edited a small Pennsylvania newspaper; Charles Holt, editor of a New London, Connecticut, newspaper; and James Callender, who had worked on the Aurora before moving to Virginia's Richmond Examiner. Like Benjamin Bache, Callender delighted in condemning the president.

The Federalists didn't target only journalists. They went after other individuals, including David Brown of Dedham, Massachusetts, who spouted anti-government rhetoric wherever a crowd gathered. Brown was arrested in April 1799, charged with "uttering seditious pieces" and helping to erect a liberty pole with a placard that read "A Speedy Retirement to the President. No Sedition bill, No Alien bill, Downfall to the Tyrants of America."

Incredibly, even an inebriated Republican, Luther Baldwin of Newark, New Jersey, became a victim. Following the adjournment of Congress in July 1798, President Adams and his wife were traveling through Newark on their way to their home in Quincy, Massachusetts. Residents lined the streets as church bells rang, and ceremonial cannon fire greeted the party. As the procession made its way past a local tavern owned by John Burnet, one of the patrons remarked, "There goes the President and they are firing at his a__." According to the Newark Centinel of Freedom, Baldwin added that, "he did not care if they fired thro' his a__." Burnet overheard the exchange and exclaimed, "That is seditious." Baldwin was arrested and later convicted of speaking "seditious words tending to defame the President and Government of the United States." He was fined $150, assessed court costs and expenses, and sent to jail until he paid the fine and fees.
The most outrageous case, however, involved Congressman Matthew Lyon, a Republican from Vermont. This fiery Irishman was one of the sharpest critics of President Adams and the Federalists. He had even engaged in a brawl on the House floor with Federalist Roger Griswold. Convinced that the Federalists intended to use the Sedition Act to silence their congressional opposition, Lyon confided to a colleague that it "most probably would be brought to bear upon himself first victim of all."

While not the initial victim, Lyon quickly felt the wrath of the majority party. In the summer of 1798, he wrote an article criticizing President Adams' "continual grasp for power" and his "unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice." During his fall re-election campaign, Lyon also quoted from a letter that suggested Congress should dispatch the president to a "mad house" for his handling of the French crisis. In October, a federal grand jury indicted Lyon for stirring up sedition and bringing "the President and government of the United States into contempt."

United States Supreme Court justices, sitting as circuit court judges, presided in the sedition trials. These judges, all Federalists, rejected the efforts of defendants and their counsel to challenge the law's constitutionality. Samuel Chase, who sat in three of the cases, clearly was on a mission. "There is nothing we should more dread," he argued, "than the licentiousness of the press."

Chase and the other judges handed down tough sentences. While none imposed the statute's maximum penalties of a $2,000 fine or a jail sentence of two years, they often sent the guilty to jail. Most of the convicted endured three- or four-month sentences. James Callender, however, served nine months, and David Brown twice as long. The average fines were about $300, although Luther Baldwin's fine was $150 and Matthew Lyon's was $1,000.

As the trials progressed, two Republican Party leaders, Thomas Jefferson and James Madison, tried to overturn the Sedition Act. Concluding that the Bill of Rights couldn't prevent abuses of power by the federal government, the two men collaborated on a set of protest resolutions asserting that the government was a compact created by the states and that citizens, speaking through their state legislatures, had the right to judge the constitutionality of actions taken by the government. In this instance, they called upon the states to join them in declaring the Alien and Sedition Acts to be "void, and of no force."

While only Kentucky and Virginia endorsed the resolutions, the efforts of Jefferson and Madison encouraged Republicans to make the Alien and Sedition Acts major issues in the campaign of 1800. Voter anger over these bills, along with higher taxes and the escalating federal debt resulting from increased defense spending, gave Republicans a majority in the House of Representatives. The Federalists lost almost 40 seats, leaving the new Congress with 66 Republicans and only 40 Federalists.

There were other unexpected results from the passage of the Sedition Act. Clearly, Federalists had hoped to stifle the influence of the fewer than 20 Republican newspapers published in 1798. Some, like John Daly Burk's Time Piece, did cease publication; others suspended operation while their editors were in jail. However, circulation increased for the majority of the periodicals. Most discouraging to the Federalists, particularly as the campaigns for the 1800 election got under way, was the fact that more than 30 new Republican newspapers began operation following passage of the Sedition Act.

Not even prison stopped Republican Congressman Matthew Lyon. The most visible target of the Federalists, Lyon conducted his re-election campaign from his jail cell in Vergennes, Vermont. Considered a martyr by his supporters, Lyon regularly contributed to this image through letters and newspaper articles. "It is quite a new kind of jargon to call a Representative of the People an Opposer of the Government because he does not, as a legislator, advocate and acquiesce in every proposition that comes from the Executive," he wrote. In a December run-off election, Lyon won easily.

By 1802, in the wake of the Federalist election defeat, the Alien Friends Act, the Sedition Act, and the Naturalization Act had expired or been repealed. The Alien Enemies Act remained in effect, but no one had been prosecuted under its provisions because the United States hadn't declared war on France, a necessary
condition for the law's implementation. After winning the presidency in the 1800 election, Thomas Jefferson pardoned all those convicted of violating the Sedition Act who remained in prison.

By virtually every measure, the Federalist effort to impose a one-party press and a one-party government on the fledgling nation had failed. Ironically, the Sedition Act prompted the opposition to expand its view of free speech and freedom of the press. In a series of essays, tracts, and books, Republicans began to argue that the First Amendment protected citizens from any federal restraint on the press or speech. Notable among them was a pamphlet entitled An Essay on the Liberty of the Press, published in 1799 by George Hay, a member of the Virginia House of Delegates. Hay argued "that if the words freedom of the press have any meaning at all they mean a total exemption from any law making any publication whatever criminal." In his 1801 inaugural address, Thomas Jefferson echoed Hay's sentiments, stressing the necessity of preserving the right of citizens "to think freely and to speak and to write what they think."

For most, the arguments of Hay and Jefferson have prevailed, although even the Republicans were willing to acknowledge that states could and should impose speech restrictions under certain conditions. Moreover, there have been occasions, most notably during World War I, when the federal government declared that free expression was secondary to military necessity. In an effort to suppress dissent and anti-war activity in 1917, Congress passed the Espionage Act, a law that made it a felony to try to cause insubordination in the armed forces or to convey false statements with intent to interfere with military operations. It was followed by the Sedition Act of 1918, which banned treasonable or seditious material from the mail. Under this provision the mailing of many publications, including the New York Times as well as radical and dissident newspapers, was temporarily halted.

In the 200 years since the passage of the Alien and Sedition Acts, each generation of Americans has struggled to determine the limits of free speech and freedom of the press. In large part, it has been a dilemma of reconciling freedom and security with liberty and order. For the Federalist Party in 1798, however, the answer was simple; order and security had to prevail.

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