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The Sedition Act of 1798

Politics or Precautions

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Table of Contents

Introduction

The war between France and England in combination with the political battle between the Federalists and the Republicans during the 1790's created the backdrop for the enactment of one of the most controversial laws in American history, the Sedition Act of 1798. Manning J. Dauer describes the setting:

> It was in the tense atmosphere of threatening war against France and bitter party animosity that the extremist legislation of the second session of the Fifth Congress was enacted.[1]

This piece of "extremist legislation" came close to declaring that all criticism of the federal government was and punishable by fine and imprisonment. No legislation before or since 1798 can compare to the act in terms of its violation of the First Amendment, which guarantees freedom of the press. The controversy surrounding the Act is derived directly from the two respective conflicts. Was the Act passed to protect the U.S. from foreign invasion or simply to be used as a tool of the Federalist national government in the attempted destruction of the Republican Party?

The undeclared war with France during the late 18th and early 19th centuries can be seen as the first major test for the newly formed American republic. Both domestic and foreign policies were threatening to tear the country apart.

1 Manning J. Dauer, The Adams Federalists (Baltimore, 1953), 152.

Internally, the Republicans and Federalists were using the institutions of the federal government as a battleground for expressing their contrasting ideals, and this struggle reached its height during the quasi-war with France. Externally, both the British and French were capturing American ships and impressing American sailors. The combination of these two forces threatened the survival of the nation.

The battle between Republicans and Federalists was largely fought in the American press. During the second half of the 18th century newspapers became increasingly partisan in their support of political parties. By 1790 newspapers were openly declaring their allegiance to either party. Newspapers reached this level of political division because editors knew that they could use the press as a powerful instrument in controlling public opinion. A study of this power can be found in John C. Miller's Crisis in Freedom: The Alien and Sedition Acts. Miller explains how a Republican journalist, Benjamin Bache, criticized the policies and personage of George Washington with such effectiveness "that it was partly because of the abuse he had received in the Aurora (Bache's newspaper) that the first President decided to reject a third term."[2] Newspapers had become an integral part of the American political arena.

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2 John C. Miller, Crisis in Freedom: The Alien and Sedition Acts (Boston, 1951), 27.

Although newspaper opinion columns were the most common vehicle in expressing political opinion, many individuals chose pamphlets to espouse their ideas. Pamphlets held a slight advantage over newspapers because there was more space in them to develop ideas. One has only to look as far back as Thomas Paine's Common Sense to discover the power of the pamphlet in swaying public opinion. Due to their influence, both newspapers and pamphlets became the main targets of the Sedition Act.

As the Republicans and Federalists were fighting for control of the nation, France and England were battling for control of Europe. The French Revolution spawned French conquest, and soon French regiments were marching across Europe. At the same time, the British had gained control over most of the waterways surrounding the European continent. Caught in the middle of this colossal struggle was the United States, for the U.S. depended on trade with both countries in order to keep its fledgling economy alive. This problem was the primary topic of debate in American political circles during the late 18th and early 19th centuries. Foreign threat and domestic political rivalry characterized the setting in which the Sedition Act was constructed.

The Sedition Act was introduced into the Senate by General James Lloyd of Maryland. The act declared that any person who conspired with intent to oppose or defeat the operation of any law of the United States or to discourage

or prevent any person holding office under the United States "or shall threaten his person with any damage to his character, person or property, or attempt to procure any insurrection, plot or unlawful assembly or unlawful combination"[3] should be fined not more than five thousand dollars and imprisoned for not more than five years. A like fine and imprisonment was to be imposed upon those found guilty of seditious printing, writing or speaking. Seditious libel, by General Lloyd's bill, was defined as an attempt to defame or weaken the government and laws of the United States by inflammatory declarations or expressions tending to induce a belief in the citizens that the government, in enacting a law, was induced to do so by motives hostile to the Constitution, or the liberties and happiness of the people; or tending to justify the hostile conduct of the French government toward the United States or attempts to defame the President and other Federal officials "by declarations directly or indirectly tending to criminate their motives in any official transaction."[4] The Act was scheduled to expire, along with the Alien Acts, on March 3rd, 1801.

The historical discussion concerning the Act exemplifies the lack of agreement as to what were the motives for its enactment. In his study of foreign policies of the Founding Fathers, Paul A. Varg describes the law as

3 General James Lloyd, "An Act for the Punishment of Certain Crimes Against the United States."

4 Ibid

"an effort to stamp out political opposition."[5] On the contrary, John C. Miller declares that the Act was created out of a real fear that "a dangerous French faction was at work in the United States and that the survival of the Republic required that it be stamped out."[6] Robert Kelley explains further:

> Worried constantly about the rumored conspiracies that, erupting in many directions, threatened to overturn the government; inclined to see all criticism as traitorous sedition; and led by a strong-minded aristocratic elite that used a heavy hand to get what it wanted, the Federalists were ready to move vigorously and with little regard for constitutional niceties when they felt a crisis had arrived.[7]

The differing viewpoints of historians make it evident that the question of motive is still undecided.

One of the most difficult tasks for any political historian is trying to discover the true motives behind legislation. Hidden agendas, political favors, interest group pressure and many other factors all contribute to cloud the possible reasons why certain laws are constructed. This is the main difficulty in studying the Sedition Act. Although it is difficult to ascertain the exact motives, it is possible that an educated guess can be made concerning the Act's origins. First, by measuring the French threat to American survival during the 1790's, a feel for the

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5 Paul A. Varg, Foreign Policies of the Founding Fathers (Michigan, 1963), 137.
6 Miller, 41.
7 Robert Kelley, The Sounds of Controversy: Crucial Arguments in the American Past (New Jersey, 1975), Vol. 1, 97.

relationship between the two countries can be formed. Also necessary is a close study of such leading Federalists as John Adams, Alexander Hamilton and the Act's authors, Robert Goodloe Harper and James Lloyd. Finally, by studying the effect the Act had on the safety of the nation and also the rivalry between the Federalists and the Republicans, a conclusion can be made as to why the Acts were passed.

Background

The origins of the two party system in America are many in number. The Constitutional Conventions during the 1780's and the signing of the Jay Treaty are just a few, but it was American foreign policy during the last decade of the 18th Century that proved decisive in the formation of the Federalist and Republican parties. It was foreign policy that suddenly pitted two of the authors of the Federalist Papers, Alexander Hamilton and James Madison, against each other. The long-standing friendship between John Adams and Thomas Jefferson was also destroyed by differences of opinion concerning foreign affairs. This political conflict between the two parties reached its apex in 1798, when the Federalists pushed the Sedition Act through Congress. The Act represents the most severe example of censorship by the federal government in American history. The events of the 1780's and 90's were the setting for this controversial point in American history.

Before relating how foreign events solidified the formation of both the Federalist and Republican parties it is important to discuss their respective ideologies concerning the subject of Republicanism. In his book, The Idea of a Party System: The Rise of Legitimate Opposition in the United States, 1780-1840, Richard Hofstadter gives

valuable insight concerning the question of ideology. Hofstadter states that:

> Both sides were nervous about the stability of republicanism in an extensive federal union pervaded by many differences of sensibility and interest. They were anxious about its ability to preserve itself in a world of predatory monarchical powers, to avoid fatal foreign entanglements (each side having a different idea of which foreign entanglement would be most fatal), and to avoid either drifting backward toward monarchy and the hereditary principle, as the Republicans feared, or, as their opponents feared, onward into an unrestrained popular regime that would in the end be fatal to property and order.[8]

It is obvious that although these men fought together to achieve independence they differed greatly in how they believed the new government would be characterized.

A major aspect of Federalist ideology was their contempt for the masses. The Federalists saw themselves as the chosen ones to look out for the best interests of American society. Although they did not go as far as labelling themselves an aristocracy there was a definite feeling of superiority over the remainder of the population. Their contempt of the masses was rooted in their pessimistic view of human nature. Federalists believed that if the individuals in society were left to their own faculties the result would be anarchy. For these reasons the Federalists believed in a strong central government and control.

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8 Richard Hofstadter, The Idea of a Party System: The Rise of Legitimate Opposition in the United States, 1780-1840 (Los Angeles, 1969), 85.

In contrast to the Federalists, the Republicans held a more optimistic view in regards to human nature. Not only did Republicans believe that government should be left to ordinary citizens, but in addition they did not agree with the stratification of society favored by the Federalists. Jefferson and his companions saw a free market economy as a way to allow individuals to strive for as much success as the desire. Finally, where Federalists recognized the virtuosity of the group as important in maintaining the country the Republicans felt the virtuosity of the individual would keep the government responsive to the needs of its citizens. These were the core differences between the two parties.

American political leaders were just starting to live under the new Constitution when the Bastille fell on July 14, 1789. During the first three years of the revolution most Americans supported it enthusiastically. Samuel Bemis, notes that "the doctrines of the French Revolution had met with genial and general approval in America, shared at first as well by the Federalists, as by the party which by the Second Congress had come to be designated as Republican."[9]

Although support for the French Revolution in 1789 pervaded all of American society, as it continued Federalists began to look at the events in France with skepticism. George Washington, Alexander Hamilton, John

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9 Samuel Flagg Bemis, Jay's Treaty: A Study in Commerce and Diplomacy (London, 1962), 186.

Adams, and Gouverneur Morris grew more and more disturbed as the Revolution became more chaotic. The increasing violence, the execution of Louis XVI and France's conquest of Europe shocked many Federalists.

In contrast to the Federalists, Thomas Jefferson and James Madison championed the Revolution. Jefferson's position as minister to France at the outbreak of the Revolution allowed him to not only observe events but to influence them as well. Jefferson's biographer, Noble Cunningham, explains:

> In truth, Jefferson was more than an observer in France. As an adviser to Lafayette, he was, to an extent not ordinarily permitted a representative of a foreign nation, a participant in the events. The times were, of course, not ordinary times, and Jefferson, who perceived the rights of man in universal terms, had no qualms about contributing to their advancement in a foreign country, especially one that played such an important role in the success of the American Revolution.[10]

Back in the U.S., Madison insisted that we owed France our help in return for their assistance during the American revolution. For his efforts, Madison was made an honorary citizen of France in 1793. Already a break could be seen forming between the Federalists and the Republicans due to their differing perceptions of the French Revolution. The Federalists saw the Revolution as bloody chaos and viewed the French attack on Great Britain with shock. On the other hand the Republicans, especially Jefferson and Madison, admired the spirit of liberty apparent in the revolution and

10 Nobel E. Cunningham Jr., In Pursuit of Reason: The Life of Thomas Jefferson (New York, 1987), 126.

championed the day when the rest of Europe would follow France in disposing of monarchies. These early interpretations would play a larger role in determining how the Federalists viewed the Republican party.

In April of 1793 the French Republic sent Citizen Genet to secure a liberal commercial treaty with the U.S. The French were hoping that by binding the U.S. to France economically, the two would move closer politically. Genet's actions while serving as the French minister in the U.S. would prove to be another source of friction between American political leaders.

When Genet landed in Charleston, South Carolina politicians were debating over the role of the U.S. in the war between France and England. Where the earlier wars between France and the other European nations hindered American commerce, the fighting between France and England would soon create a much more complex trading environment. The U.S. was in the unfortunate position of having strong economic ties to Great Britain while at the same time being in debt to France for their help during the American Revolution. Although Washington's cabinet was in agreement that the U.S. should stay neutral, the question became whether or not to issue a neutrality proclamation. Madison and Jefferson felt that by claiming neutrality the U.S. would be missing a chance to use the threat of nonpartisanship to gain commercial concessions from both of the warring nations. On the other hand, Alexander Hamilton

believed that a proclamation was needed to keep the U.S. out of the dangers of involvement associated with war. Hamilton was eventually successful in persuading Washington to issue the Proclamation of Neutrality in late April of 1793, but the question of a proclamation had further divided the political camps of Jefferson and Hamilton.

In an effort to exploit their domination of the sea, the British called for the seizure of any neutral vessels carrying exports from the islands of the French West Indies in November of 1793. Americans were outraged after hearing of the decree. Thomas Jefferson led the protests in explaining the implications of the British decree:

> We see, then, a practice begun, to which no time, no circumstances, prescribe any limits, and which gives food, clothing and comfort, to the great mass of inhabitants of these States. If any nation whatever has a right to shut up, to our produce, all the ports of the earth, except her own, and those of her friends, she may shut up these also, and confine us within our limits. No nation can suscribe to such pretensions; no nation can agree, at the mere will or interest of another, to have its peaceable industry suspended, and its citizens reduced to idleness and want.[11]

Where Jefferson was firm in his conviction against the British decree, Hamilton tried to appease the British by convincing President Washington to send John Jay to England for the purpose of securing a commercial treaty.

Although President Washington had declared in his neutrality proclamation that "It is our true policy to steer clear of permanent alliances with any portion of the foreign

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11 American State Papers, Vol. 1, 239.

world," the British decree was making it difficult for the U.S. to remain neutral. Beginning in 1794 the British navy became active in capturing American merchant vessels that were trying to conduct trade between the French West Indies and the French-controlled European continent. In an attempt to stop the seizure of American ships and sailors, the federal government signed Jay's Treaty with Great Britain in November of 1794. Although the treaty succeeded in removing British garrisons from the Northwest Territory no decision was made concerning the subject of the British seizures. Not only did the British continue to capture American ships, but the French did as well, declaring that Jay's Treaty annulled any treaties made between the U.S. and France. The seizures decimated American trade, to the dismay of the American public which, as a result, was becoming increasingly dissatisfied with the Federalist party in power.

As John Adams took office in March of 1797 the battle between the Republicans and Federalists for control of the American government was raging. Although the Federalists, with the election of Adams, were able to continue their dominance of the executive branch, their power had declined, primarily due to the failure of Jay's Treaty in preventing the impressment of American sailors by British and French ships. The resulting dissatisfaction presented Adams with a much more difficult campaign for the presidency than expected, and he defeated Thomas Jefferson by only three

electoral votes. The power of the Federalists seemed to be ebbing after more than a decade of government control.

In the years following Jay's Treaty, American trade was being decimated as a consequence of the war in Europe. At the same time the treaty strained diplomatic relations between France and the U.S. In November of 1796 France suspended diplomatic relations with the U.S. and in 1797 France refused to accept Charles C. Pinckney as the new American minister to France. The U.S. and France were moving toward war.

While American ships were being sunk, Republican newspapers criticized the policies of the Federalist government. The most vocal of these newspapers was The Aurora, a Philadelphia based paper. The Aurora's editor, Benjamin Bache, was described as being the "gadfly to the Federalist party."[12] Bache led the press in criticizing the Federalists' foreign policy.

In an attempt to ease relations with France, President John Adams sent a three-man commission to Paris in 1797 to secure a treaty. The XYZ diplomats, as they became known, were John Marshall, Charles C. Pinckney and Elbridge Gerry. The French treatment of the commission, which will be examined later, would prove to further divide the U.S. and France.

The XYZ Affair turned the possibility of war with France into almost a certainty. Adams created a Department

12 Miller, 26.

of Navy, independent of the War Department, soon after the Affair. National defenses were also being improved and increased. At the same time the Federalists pushed the Sedition Act through Congress to serve as "an effective weapon against what was deemed an especially pernicious and dangerous form of domestic opposition in time of war."[13] Passed in July of 1798, the Act declared that any anti-government activity, including the publication of "any false, scandalous and malicious writing," would be a high misdemeanor, punishable by fine and imprisonment. Not only was the act a shock in 1798, but to this day it stands as possibly the most restrictive law concerning civil liberties in American history.

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13 Frank Maloy Anderson, "The Enforcement of the Alien and Sedition Laws," American Historical Association, Annual Report for 1912, 115.

Part I

The French Threat

The Genet Affair

The events relations between France and the United States during the 1790's had an important impact on the creation of the Sedition Act. The two events that best exemplify the relationship between the U.S. and France are the diplomatic mission of French Minister Edmond Genet to the U.S. in 1793 and the affairs of the XYZ commission in France during 1798. These two events are not only largely responsible for the rupture of relations between France and the United States but also between the French and the Federalists.

When France sent Edmond Genet to the U.S. for the purpose of securing American support for its war against England, little did they realize how quickly an ally could turn away due to the affairs of one man. Donald Stewart describes the change of heart: "Few public figures have ever been subjected to more adulation, attention, and then criticism in such a brief period."[14] More importantly, Genet would be the one primarily responsible for turning the Federalists against the French Revolutionary government.

When Genet landed in Charleston, South Carolina in 1793 he came with instructions from Foreign Minister Lebrun regarding his diplomatic mission. Genet was to try and

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14 Donald H. Stewart, The Opposition Press of the Federalist Period (Albany, 1969), 155.

persuade Americans to invade Spanish territory, and possibly even push the U.S. to invade Canada. Both invasions would serve to divert English and Spanish forces from the battles on the European Continent. Genet was also authorized to collect the remainder of America's Revolutionary War debt to France, but most importantly he was instructed not to alienate the United States. Unfortunately, Genet started distancing himself from the American government as soon as he landed in South Carolina. The same day that Genet landed he urged the arming of four French ships for the purpose of privateering against British ships along the American coast. This action directly violated the American Neutrality Proclamation of 1793 and incensed the Federalists who where primarily responsible for the Proclamation. Alexander Hamilton, the leader of the Federalists, was quick in his criticism of the new French minister. Historian Paul Varg explains:

> In the Daily Advertiser Hamilton outlined the actions of Genet and showed that they were inconsistent with the sovereignty of the United States. He made great capital out of Genet's appeal to the people over the head of the President and exploited the President's popularity to stir up hatred against all those who showed any sympathy with France.[15]

The arming of ships served to be only the beginning of Genet's diplomatic blunders.

As Genet moved up the Atlantic coast towards Philadelphia he continued to push the limits of American

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15 Varg, 90.

patience. Although he was cheered as a representative of the new French Republic in the coastal towns he visited, with every mile he moved north the national government in Philadelphia became more disturbed with his actions. While he moved north by land, the ship that Genet took to the U.S., the Embuscade, moved up the Atlantic seaboard capturing British ships off the capes of Delaware under orders from Genet. One of those ships captured, the Grange, was brought into Delaware Bay to the alarm of the federal government. Even Jefferson, admirer of the French Revolution, was alarmed at how Genet was treating American sovereignty:

> Never in my opinion was so calamitous an appointment made, as that of the present Minister of France here. Hot-headed, all imagination, no judgment, passionate, disrespectful & even indecent towards the Public in his written as well as verbal communications, talking of appeals from him to Congress, from them to the people, urging the most unreasonable & groundless propositions, & in the most dictatorial style etc, etc, etc. If ever it should be necessary to lay his communications before Congress or the public, they will excite universal indignation. He renders my position immensely difficult.[16]

Although Genet agreed to surrender the Grange to the American government the damage had already been done. Politicians in Philadelphia had now witnessed the contemptable behavior of Genet firsthand.

In May of 1793 Genet sought to utilize the French decree of February 19 to obtain concessions from the U.S.

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16 Paul L. Ford, The Writings of Thomas Jefferson (New York, 1892-99), VI, 338-339.

The decree opened French West Indian ports to American ships and also equalized the import duties paid by American and French shipowners. French Foreign Minister Lebrun felt that in exchange France should be exempted from paying American tonnage duties. To further put pressure on the government to make a favorable decision, Lebrun had instructed Genet to manipulate public opinion through the press. To do this Genet needed money and the debt owed France from the Revolutionary War was the logical source.

When Genet came to Philadelphia asking for immediate full repayment of the debt, Washington's cabinet fell into an uproar. At the head of this uproar was Hamilton. As Secretary of the Treasury "Hamilton saw no reason to conceal his reasons for denying the request. He frankly told Genet that advance payment enabling France to purchase supplies was tantamount to assisting one of the parties in the war."[17] Although Jefferson was later able to ease Genet's financial problems, relations between Genet and the U.S. government became worse.

Although Genet continued to defy the American government, there is no need to relate the remainder of his diplomatic blunders. With the request for full repayment of the Revolutionary War debt, Genet successfully alienated the leader of the Federalist Party, Alexander Hamilton, to a point of opposition. By the time the French minister was recalled to France in December of 1793 Hamilton vowed to

17 Harry Ammon, The Genet Mission (New York, 1973), 72.

oppose any measures that would put the U.S. into a closer relationship with the new Republic. Consequently, Genet's visit not only soured the relationship between the governments of the U.S. and France but also pitted perhaps the most powerful man in American politics, Alexander Hamilton, against France and her American friends, the Republicans.

The XYZ Affair

In the wake of the Jay Treaty of 1794 the U.S. was thrust into an extremely adverse situation. Not only did they fail to secure a promise from the British that they would stop seizing American ships, but also, because the U.S. signed the treaty, France declared the Franco-American Treaty of 1778 nullified and began to capture American ships. In an attempt to ease relations with France, President Adams sent a three-man commission to Paris to negotiate a new treaty. The events surrounding the commission would prove to be the final steps in terms of the deteriorating relationship between the U.S. and France.

The commission of Gerry, Marshall and Pinckney was received at an informal meeting by French Minister Talleyrand in October of 1797. Talleyrand requested that the envoys submit him a report on the status of French-American relations. He would then submit the report to the French Directory and then he would give them a reply. After weeks of waiting without an answer to their report, the commission was aproached by Talleyrand who demanded that three requirements be met before negotiations were to continue: Pay a bribe of fifty thousand sterling to the Directory, advance the French government a large loan and offer adequate apologies for the hostile remarks John Adams made in his presidential address. With this information

Marshall sent the demands back to Philadelphia. Thinking that the President would hesitate in releasing the dispatches to Congress, because they presumably showed France in a conciliatory tone, Jefferson and other Republicans demanded that the papers be released. Knowing that the content of the letters would cause great outrage and influence the public to side with the Federalists agains France, Adams gladly obliged and the ensuing public response was massive. Everywhere people were calling for war with France. John C. Miller explains the setting:

> The publication of the X, Y, Z dispatches electrified the country as had no other event since the Revolutionary War. A newspaperman put the words "Millions for defense but not one cent for Tribute" in the mouths of the American envoys, and the slogan became the watchword of American patriots.[18]

Riding this wave of enthusiasm was President Adams. Never before, or after for that matter, would the Federalist Party gain such popularity as when the XYZ dispatches were released. The Federalist Party had been "raised to the pinnacle of their popularity with the American people,"[19] and the Republicans were deplored for their association with the "gallic marauders."

In contrast to the Federalists, the Republicans received the dispatches with shock and horror. Donald H. Stewart explains the Republican reaction:

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18 John C. Miller, The Federalist Era, 1789-1801 (New York, 1960), 212.

19 Ibid, 210.

> Thunderstruck Republicans had anticipated nothing of this sort. There had been all sorts of rumors, but most of them had associated French unwillingness to treat American envoys with justified outrage over the administration's conduct.[20]

Due to their association with the French Republic, Republicans and Republican newspapers were in a dangerous situation. Not only had their popularity been significantly decreased, but "the resolve of the Republican leadership to resist Federalist programs was weakened."[21] Federalists found it much easier to push defense bills through congress. The Aurora, the leading Republican newspaper, lost a large portion of its circulation due to the XYZ Affair. The Republicans were even beginning to fear for their own survival as a party.

When analyzing the significance of the XYZ Affair, in connection with the Sedition Act of 1798, a close look at the mission itself is important. It is the nature of the negotiations, and how they were treated in the U.S., that was responsible for the public outcry against them.

Problems with the mission were present before the envoys even left Philadelphia. First, it was probably the worst possible time to negotiate with France. Gerard H. Clarfield explains:

> The reconstituted Directory, having just successfully overturned constitutional government in France, was not in a talking mood. The armies of France were almost everywhere successful. The Continental allies had been crushed, and England

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20 Stewart, 294.
21 John F. Hoadley, Origins of American Political Parties, 1789-1803 (Lexington, 1986), 152.

seemed about to be vanquished. An invasion force was being readied in France to bring the war to English soil. If the attack succeeded, terms could be dictated to the U.S.; if it failed, there would be plenty of time later to talk.[22]

Secondly, Adam's choice of envoys did not please the French. Where he made sure that the envoy he sent to England, John Jay, to negotiate the Jay's Treaty was pro-British, he did not do the same for the French mission. Not only were all three Federalists and pro-British, but Pinckney in particular was ardently anti-French. Before negotiations Talleyrand even mention that "although Mr. Adams, in appointing Mr. Pinckney again, has not given great proof of a spirit of conciliation, we will do all in our power, when the commissioners arrive to make perfectly clear our pacific intentions."[23] It seemed as if the Federalists wanted the mission to fail.

Perhaps the biggest reason behind the French reaction to the three envoys was President Adam's speech to Congress in May of 1797. In the speech Adams questioned the French willingness to reconcile their differences, blamed the destruction of American commerce totally on "the depredations of French cruisers,"[24] and urged that "an efficient preparation for war can alone insure peace."[25] To Talleyrand and the French this was an outrage. Negotiations

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22 Gerard H. Clarfield, Timothy Pickering and American Diplomacy, 1795-1800 (Columbia, 1969), 142.

23 Albert Hall Bowman, The Struggle for Neutrality: Franco-American Diplomacy During the Federalist Era (Knoxville, 1974), 308.

24 John Wood, The Suppressed History of the Administration of John Adams (New York, 1846), 173.

25 Ibid, 174.

had barely begun and the American president was blaming France for U.S. problems, criticizing French diplomacy and preparing for war. Adam's speech severely affected the progress of the negotiations.

The handling of the dispatches, once they reached Philadelphia, is the source of the last reason why it seemed as if the Federalists wanted the negotiations to fail from the beginning. Prior to receiving the dispatches, the Federalists were being subjected to an enormous amount of criticism from the Republican presses for their Jay Treaty failure, not to mention the disapproval of the American public. So as the dispatches came in the Federalists decided to hold them and release them to the public as a whole rather than one at a time. By doing this the Federalists received the most advantageous response from the public; rage and anti-French sentiment.

Deciding whether the failure of the delegates was pre-planned by the Federalists is difficult to answer, but there is definite proof that there were many ways in which negotiations could have been improved from an American standpoint. The important thing to realize is that because of the Affair the Federalist party not only increased its own popularity but also reduced that of the Republican party, due to the Republicans' connections with France. Largely due to the Federalists handling of the Affair, the U.S. moved toward an undeclared war with France while the Republicans struggled for survival.

Naval Statistics: 1790's

On February 27th, 1797 Secretary of State Timothy Pickering presented a report on the character of the injuries suffered by merchants and mariners at the hands of the French. The list of injuries was long, including such things as an embargo of American goods at Bordeaux from 1793-94 and the nonpayment of bills and other evidences of debts, drawn by the colonial administrations in the West Indies, but the grievance that most angered American merchants, as declared by Pickering, were the "Spoliations and maltreatment of their vessels at sea by French ships of war and privateers."[26] Although Pickering, an arch-Federalist, managed to omit the depredations of the English, Spanish and Dutch his report is valuable in that French depredations on American shipping had increased throughout the 1790's and especially between the signing of Jay's Treaty in 1795 and the ratification of the Alien and Sedition Acts in June of 1798. By examining the effect of these attacks on American commerce the approximate level of threat to American safety can be calculated.

The most logical place to begin studying the effects of French naval operations would be an examination of how American commerce faired in the late 18th Century. Ben Wattenberg's Statistical History of the United States From

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26 Gardner W. Allen, Our Naval War With France (Boston, 1909), 31.

Colonial Times to the Present lists that between 1792 and 1816 American exports rose from $21,000,000 to $82,000,000; and imports rose from $32,000,000 to $143,000,000. The tonnage of American vessels engaged in foreign trade increased from 564,000 to 1,732,000 and the percentage of United States flag ships entered and cleared from American ports rose from 62 to 77. Although some of this growth can be attributed to the simple opening up of new markets and ports it does not nearly account for the huge boost in trade. The primary reason for this surge concerns the war between France and England. Lasting roughly the same period, the war allowed American merchants to take advantage of the increase in demand of supplies from both belligerents. Twenty-three years of global conflict provided Americans with many economic opportunities.

Although commerce did increase, that fact does not prove that the French threat to American commerce was nonexistent. In his book examining the Quasi-War between France and the U.S., Michael A. Palmer explains that the war between France and England created a harmful as well as beneficial situation for the U.S.:

> The New World was an integral part of the European power system and pressures would be exerted upon the United States that would strain its neutrality, threaten its ability to reap fully the benefits of its position, and perhaps drag it into war.[27]

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27 Michael A. Palmer, Stoddert's War: Naval Operations During the Quasi-War with France, 1798-1801 (Columbia, 1987), 4.

American politicians were aware of these dangers. The Jay Treaty lessened frictions with Great Britain in the Northwest and on the seas. Conflict with Spain was avoided through the Pickney Treaty and the Barbary pirates were also kept at bay by using diplomacy. Unfortunately the Jay Treaty angered the French as much as it had satisfied the British.

By signing the Treaty, injuries on American shipping due to French attacks increased. In 1795 alone French cruisers had captured 316 American ships, and many attacks were extremly brutal. Alexander DeConde relates one incident:

> Early in March 1797 a French armed brig captured the ship Cincinnatus of Baltimore. The captors tortured the American captain with thumbscrews to force him to declare his cargo to be English property so that they could confiscate it legally. He refused, so finally he and his ship were released, but only after he was robbed of most of his own property and his ship's provisions were plundered.[28]

These attacks were covered extensively in American newspapers. Both Republican and Federalist papers argued over the validity of the attacks. Republican papers describing reports of French captains receiving letters of marque to take American ships as so much "British Fudge."[29] Federalist papers were equally as active in their criticism of the "Gallic devotees."[30] Through the publicization of

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28 Alexander DeConde, The Quasi-War: The Politics and Diplomacy of the Undeclared War with France, 1797-1801 (New York, 1966), 9.

29 Boston Independent Chronicle, April 16, 1798.

30 Gazette of the United States, June 20, 1798.

the French seizures the mass of American society became more aware and outraged in response to the attacks. As the accounts of depredations grew, so did the cry for war with France from the American public.

Another source of anger came from the Federalist party in power, including the President himself. In an address to the city of Providence, Rhode Island, John Adams exclaimed:

> The honor of our nation is now universally seen to be at stake, and its independence in question, and all America appears to declare, with one heart and one voice, a manly determination to vindicate both.[31]

Adams was not the only Federalist to voice his displeasure. In a letter to a Federalist colleague, Secretary of State Pickering wrote that nothing would "satisfy the ambitious and rapacious rulers of that nation (France) but universal dominion of the sea as well as of the land with the property of all nations at their disposal, to seize and keep what portion they please."[32] George Washington called the French conduct "outrageous beyond conception."[33] Federalists lead the uproar against the French incursions.

In examining the previously presented evidence it would seem that there was a contradiction between the statistics and the response involving the French attacks. Why would Americans complain profusely about attacks on their commerce

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31 Frank Donovan, ed., The John Adams Papers (New York, 1965), 264.
32 Pickering to Higginson, March 6, 1798, Pickering Papers, VIII, 187.
33 Washington to Hamilton, January 22, 1797, Washington's Writings, XXXV, 373.

when in fact trade was increasing? The answer lies in the fact that trade was not the only thing that Americans valued. The source of the anger came from the blatant way in which the French government violated American neutrality. By seizing American ships France was abusing the very thing that the colonists went to war for in 1775, that is the ability to govern and protect their own people. Regardless of how commerce increased, Americans were more concerned with the way in which American goods and ships were being captured and how sailors were being treated.

This leads us to our question as to whether there was enough of a measurable threat to American sovereignty to warrant the creation of the Sedition Act of 1798. Although the actual damage to American commerce was negligible most Americans were not aware of this fact. Newspapers covered the capturing of American vessels extensively. It seems as if the federal government were blind to the statistics also. Like ordinary citizens, it seems as if those in the capital had no idea that their commerce was increasing during the late 18th century. The majority of congressmen reacted in the same manner as their constituents:

> They take all our ships that they can lay their hands on, and even in many instances, confine our sailors as prisoners of war. When the ships are brought to trial, the owners or captains are not allowed to produce the least evidence, or say a word in their defence. There have been yet very few, if any, instances of acquittal. All this under the pretence that we have used them ill in some instances, which, according to their own account, are very trifling, and where the law and

practice of nations, including France itself, is most clearly on our side.[34]

Whether or not the Federalists also saw a chance to eliminate the Republicans will take a closer examination of their leaders, John Adams and Alexander Hamilton, but there was justification for a fear for the safety of the country due to not only the increase in French attacks but by the effects of the mere nature and reporting of those attacks.

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34 Harper to Constituents, March 13, 1797, Circular Letters of Congressmen to Their Constituents, 1789-1829. (Chapel Hill, 1978), Vol. 1, 86.

Part II

Federalist Leaders and the Sedition Act

John Adams: The Unpredictable President

The presidency of John Adams signified a turning point in American history, marking the sunset of the Federalist party; Adams was the last president to be denoted "Federalist." He tried to prevent the creation of parties, but instead they became more polarized. After Adams died in 1826 a eulogy described his position all too well:

> Adams fell upon evil days and evil tongues. A powerful party (the Federalists), scarcely repressed by the transcendent veneration entertained by the whole people for his predecessor (Washington), was prepared to coil itself around the movements of Adams. "Too independent," in the words of another, "to wear the trammels of either side," he was not cordially supported by the federal party, while he was zealously assailed by their antagonists (the Republicans).[35]

Although this passage exaggerates the extent to which Adam's stayed above party politics, it is true that throughout his presidency he was rarely a blind follower of the Federalist party. His free will is evident in his refusal to declare war against France in 1798 in the face of a strong pro-war Federalist party. Partly because of Adam's refusal to be the tool of the Federalists, the party went from its highest level of popularity to extinction. It was with this same independence of mind that Adams dealt with the Sedition Act of 1798.

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35 Caleb Cushing, A Eulogy on John Adams and Thomas Jefferson (Cambridge, 1826), 41.

When Adams was inaugurated in March of 1797 he was met with a host of problems. That he was victorious by only three electoral votes attested to the growing popularity of the Republican party. The prosperity of the late 1780s and early 1790s was giving way to "a wave of speculation and then to economic depression."[36] Also the new settlers who had begun to cross the Appalachians had become suspicious of "the establishment" in the capital. But it was the problem of international affairs that loomed largest over the new president. Not only did Jay's Treaty gain little from the British in terms of concessions, the original reason for the treaty, British impressment of American sailors, was never resolved, but it also infuriated the French as well. The French depredations on American shipping that followed and the affect of the XYZ Affair on partisan politics set the stage for the Sedition Act of 1798.

Determining John Adam's role in the creation of the Sedition Act must be done carefully, especially when examining speeches and addresses, because as president, Adams had to constantly worry about projecting an image which differed with every audience, and due to this his personal correspondence is extremely valuable. By examining these letters and Adam's decision-making concerning the Act,

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36 Ralph Adams Brown, The Presidency of John Adams (Wichita, 1975), 22.

a conclusion can be made as to what his role was in terms of its creation.

Adams' involvement or responsibility for the Sedition Act is comprised of three parts. First, he never opposed the creation of this legislation, and secondly, he did not kill the act with a veto. Furthermore, through his replies to addresses, especially in the late spring and summer of 1798, John Adams played a major role in whipping up nationalism, and that spirit, in turn, was largely responsible for the repressive legislation then passed. In a proclamation given by Adams on March 23, 1798 for a national fast:

> As the United States of America are at present placed in a hazardous and afflictive situation, by the unfriendly disposition, conduct, and demands of a foreign power, evinced by repeated refusals to receive our messengers of reconciliation and peace, by depredations on our commerce, and the infliction of injuries on very many of our fellow-citizens, while engaged in their lawful business on the seas; -- under these considerations, it has appeared to me that the duty of imploring the mercy and benediction of Heaven on our country, demands at this time a special attention from its inhabitants.[37]

By linking a sacred religious practice, the fast, to the French attacks Adams struck a heart string of American nationalism. Religion, to the majority of Americans, was of great importance thus by juxtaposing religious faith with

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37 Charles Francis Adams ed., "Proclamation for a National Fast" March 23, 1798, The Works of John Adams, Second President of the United States, Vol. 9, (Boston, 1854), 169.

national security Adam's "stirring the coals" helped to create a setting where the Sedition Act could be enacted.

More light is shone on Adam's role by further examining his addresses. Only five days after he signed the Sedition Act, the president hinted that it might moderate the verbal attacks upon the government. "Until lately," read one of his addresses, "licentiousness has been too little restrained."[38] It took little imagination to see that he believed that the law directed against such "licentiousness" would restrain it. In a letter to the citizens of Boston Adams declared:

> I cannot but be of the opinion that the profligate spirit of falsehood and malignity, which has appeared in some, and the unguarded disposition in others, to encourage it, are serious evils, and bear a threatening aspect upon the Union of the States, their Constitution of Government, and the moral character of the Nation."[39]

Ten years later Adams attempted a defense of his support of the Sedition Act. In a letter to the Boston Patriot he claimed that his legislation was part of Hamilton's secret instructions to congressional leaders and cabinet members. Adams denied that he had adopted Hamilton's idea of a sedition law. "I recommended no such thing in my speech," he said; "Congress, however, adopted both these measures." Although Adams tried to throw the responsibility on

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38 To the officers and men of Colnel Romyen's militia regiment in Montgomery County, N.Y., dated Philadelphia, July 19, 1798, Albany Centinel, August 7, 1798.

39 Answer dated Quincy, August 7, 1798, Columbian Centinel, August, 19, 1798.

Hamilton, he wrote: "I knew there was need enough of both (the Alien Act as well), and therefore I consented to them. But as they were then considered as war measures, and intended altogether against the advocates of the French and peace with France, I was apprehensive that a hurricane of clamor would be raised against them, as in truth there was, even more fierce and violent than I had anticipated."[40] By his own admission, then, Adams supported the Sedition Act because he thought there was a need for it. Nor did his apprehensions prevent his approving its energetic enforcement against the critics of his administration.

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40 Adams' Works, IX, 290-291.

Alexander Hamilton: The Party Leader

When searching for the true reason why the Federalist national government created the Sedition Act there is perhaps no better place to look than to the leader of that party, Alexander Hamilton. From the beginning of the Federalist Party until its death, Hamilton has always been recognized as its primary voice. Thus in order to decide whether the Acts were a political move or a precautionary one an examination of his role in its creation and his overall feelings concerning the Act must be made.

Hamilton's biographers have been almost unanimous in absolving him of supporting the Sedition law. Some go even further and portray him as a defender of civil liberties who, along with John Marshall, stood against the whole Federalist party in opposition to the Act. These writers base their conclusions on the hastily written letter which Hamilton dashed of to Oliver Wolcott on June 29, 1798:

> I have this moment seen a Bill brought into the Senate entitled a Bill to define more particularly the crime of Treason. There are provisions in this Bill which according to a cursory view appear to me highly exceptionable & such as more than any thing else may endanger civil War. I have not time to point out my objections by this post but I will do it tomorrow. I hope sincerely the thing may not be hurried through. Let us not establish a tyranny. Energy is a very different thing from violence. If we make no false step we shall be essentially united; but if we push things to an extreme we shall then give to faction body & solidarity.[41]

41 Hamilton to Wolcott, June 29, 1798. The Papers of Alexander Hamilton, Vol. 21, (New York, 1974), 522.

This letter was directed solely against James Lloyd's first draft of the Sedition Law, a version which the Senate itself recommited two days before Hamilton wrote his letter. When the Senate reported an energetic sedition bill in place of its violent treason and sedition measure, Hamilton did not register any complaint or advise any mitigating amendments. Although this new measure was more restrictive of free speech than was the final Sedition Law, he wrote no urgent letters opposing it. Nor did he protest when President John Adams signed the bill.

After the enactment of the Sedition Law, Hamilton became a leading advocate of their enforcement. Early in 1799, following his appointment as a major general in the provisional army raised against France, he bemoaned the failure of President Adams to execute the laws more vigorously. "What avail laws which are not executed?" he asked the Speaker of the House. He claimed that many incendiary presses were edited by renegade aliens who engaged in their "destructive labors" in "open contempt and defiance of the (Alien and Sedition) Laws." Why are they not sent away?" the general demanded. "Are laws of this kind passed merely to excite odium and remain a dead letter?" Vigor seemed to him as necessary in the enforcement of the laws by the executive branch as in their enactment by the legislative. "If the President requires to be stimulated," he suggested to the Speaker, "those who can approach him ought to do it."

Rigorous enforcement of the laws, however, was not enough for Hamilton. In his letter to the Speaker, he proposed even more drastic laws against criticism of government officials. The "internal situation of the United States" made it necessary to pass additional "laws for restraining and punishing incendiary and seditious practices." To counteract faction opposition to the government, which he feared would erupt into violence, Hamilton suggested that all writings which were libels at common law should be prosecuted in federal courts as sedition "if levelled against any officer whatsoever of the United States." If federal officials were to perform their duties properly, it was essential to maintain public confidence in them "by preserving their reputations from malicious and unfounded slanders." Hamilton thought that this could best be done in the federal courts: "They ought not be left to the cold and reluctant protection of State courts, always temporizing, and sometimes disaffected."[42]

Since he did not explain whether these new provisions should be incorporated into the Sedition Act or should replace that law altogether, Hamilton's remarks are open to two interpretations. First, he could have meant exactly what he said--that all writings which at common law were libels should be regarded as seditious if leveled against federal officials. If Congress had passed a new act based

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42 Hamilton to Dayton, 1799, Hamilton's Works, Vol. 3, (New York, 1885), 517-522.

on this concept, the truth of the statements about the officials would not have been a defense against the charge of seditious libel. The criticism might have been ever so truthful, but if it had tended to damage the reputation of the government, the administration, or the official, it could have been punished as sedition by common law standards. These specified that "the greater the truth, the greater the libel." Such an act would have outlawed all political opposition.

Second, Hamilton might have meant that the Sedition Act itself should be expanded in order to define as seditious all writings which were libels at common law. If this had been done, truth would have remained a defense, but the scope of the act would have been widened to allow prosecution not only of critics of the president or of Congress but also of "any officer whatsoever of the United States." In either event, Hamilton was in favor of protecting the reputations of all federal officers from political criticism by enacting an even tougher sedition act than that of 1798. Moreover, any new law modeled after this suggestion would have shielded Hamilton from Republican criticism of his administration of the army. If he meant what he said, then, Hamilton backed a more drastic restriction of freedom of speech and of the press than the act which his biographers picture him as opposing. Responsibility for the Sedition Law rests on the whole Federalist Party. Although this party openly split into the

Adamite and Hamiltonian wings in the election of 1800, not a single Federalist questioned the constitutionality of the Sedition Law, and only John Marshall doubted its wisdom. With this sole exception, every Federalist favored its subsequent enforcement against Republican spokesmen, whether they were congressmen, editors, or less influential citizens.

Conclusion

After examining the previous evidence there is one more factor that needs to be considered before coming to a conclusion as to the reasons behind the creation of the Sedition Act.

In contemporary American politics the Democratic and Republican parties have reached a level of establishment where they are considered to be permanent institutions of the political system. It is rare that the two parties are not mentioned during a discussion of American politics. With these political labels comes a host of preset notions concerning topics ranging from domestic affairs to foreign relations. The 1790's viewed the presence of parties in a much more different light than we do today.

Perhaps there is no better place to find an examination of the origins of political parties than in Richard Hofstadter's book The Idea of a Party System. Hofstadter states that "The Founding Fathers did not have, in their current experience or historical knowledge, models of working parties that would have encouraged them to think in such terms."[43] The preceding statement explains one of the main reasons why there were the tensions between the federal government and any political opposition. The idea of a legitimate opposition to government is one that was unheard

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43 Hofstadter, 39.

of in the 18th Century. Due to the new nature of party politics it was the differing perceptions of their merits and flaws that created much of the antagonism which was partly responsible for the animosity felt between the Federalist and Republican parties.

One of the primary sources of political thought that Federalists looked to for guidance were the writings of Henry St. John Bolingbroke. In his book, The Idea of Patriot King, Bolingbroke discussed parties extensively. To Bolingbroke:

> Parties, even before they degenerate into absolute factions, are still numbers of men associated together for certain purposes and certain interests, which are not, or are not allowed to be, those of the community by others. A man who has not seen the inside of parties, nor had the opportunities to examine nearly their secret motives, can hardly conceive how little a share principle of any sort, tho principle of some sort or other be always pretended, has in the determination of their conduct.[44]

Although Federalists did not believe in Bolingbroke's idea of a benign monarch destroying party factions they did adhere to the belief that parties needed to be destroyed for they prevented the smooth operation of government.

It would seem that, on the surface, Bolingbroke's theory of the destruction of parties does not consist with the strong partisanship of many Federalists, especially Alexander Hamilton. In reality the Federalists saw their partisanship as a way to eventually destroy party politics. Hamilton, and others, felt that they could use their

44 Ibid, 21.

partisanship to gain power and then once they gained control they could unite the country and therefore destroy the need for parties. "In their eyes the only true justification of any party would be its promise of ultimately eliminating all parties."[45] This belief differed greatly with the Republicans who believed "that though parties are indeed evil, their existence is an unavoidable by-product of a free state, and that they must therefore be endured with patience by all men who esteem liberty. The evils of party are thus held to be part of the price one pays for liberty. One can check and limit parties, but one cannot hope to do away with them."[46]

With this information the actions of the Federalists leading up to, and including, the creation of the Sedition Act are understandable. After the XYZ letters were released and the popularity of the Federalists soared they saw a chance to destroy the political opposition that they felt was a menace to society. Due to their hatred of political parties they used the Sedition Act to attack the thing that threatened their attempt to unify the country under their leadership, the Republican party. This would also explain the uneasiness of Adams, who agreed with the ideas of Bolingbroke but also knew that the Act was not suitable to a Republican government. In conclusion, although a French threat existed it merely gave the Federalists a vehicle in

45 Ibid, 18.
46 Ibid, 24.

which they could destroy the Republican party and eliminate the party system that they felt was ruining the unity of the nation.

Appendix

The Sedition Act, July 14, 1798

Section 1

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, which are or shall be directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the government of the United States, from undertaking, performing or executing his trust or duty; and if any persons, with intent as aforesaid, shall counsel, advise or attempt to procure any insurrection, riot, unlawful assembly, or combination, whether such conspiracy, threatening, counsel, advice or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanor, and on conviction, before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years; and further, at the discretion of the court may be holden to find sureties for his good behaviour in such sum, and for such time, as the said court may direct.

Section 2

And be it further enacted, That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either House of Congress of the United States, or the President of the United States, with intent to defame the said government, or either, house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nations against the United States, their people or government, then such person, being

thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

Section 3

And be it further enacted and declared, That if any person shall be prosecuted under this act, for the writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defence, the truth of the matter contained in the publication charged as a libel. And the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases.

Section 4

And be it further enacted, That this act shall continue and be in force until the third day of March, one thousand eight hundred and one, and no longer: Provided, that the expiration of the act shall not prevent or defeat a prosecution and punishment of any offence against the law, during the time it shall be in force.

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