

THE NEW LIBERTARIANISM AND THE SEDITION ACT OF 1798

Gerard J. Fitzpatrick
Ursinus College

When the First Amendment was ratified in 1791 many Americans still regarded trenchant criticism of government, its officers, or its policies to be criminally punishable "seditious libel." Not until the bitter controversy ignited by the Sedition Act of 1798 did Americans formulate a theory of political expression in a republic that undercut arguments justifying prosecution for seditious libel. The result was a new libertarianism with regard to freedom of speech and press.

The ratification of the Constitution in June 1788 and the launching of the new government under the leadership of George Washington the following April offered Americans hope that their differences were behind them and that national unity was finally at hand. Within a few short years, however, the country found itself more deeply divided than ever as the new Federalist and Jeffersonian-Republican parties increasingly clashed over the proper course of public policy. The partisan rancor reached a crescendo in 1798 when the Federalists enacted the infamous Alien and Sedition Acts to quell their political opposition (see Miller, 1960).

These bitter policy disputes were part of a larger and older ideological debate over the meaning of free government. Unearthing the origins of this debate has led over the past quarter century to a shift in scholarly perspectives on the ideological roots of the Founding era. Earlier studies traced these origins to the towering influence of John Locke (see Hartz, 1955). "Revisionist" scholars (see Bailyn, 1967; Wood, 1969; and Pocock, 1975) argue that an intellectual tradition imported from England but traceable to the ancient world, and known as "republicanism" or "civic humanism," was more important for the Founding mind than Lockean liberalism. In place of the Lockean emphasis on estranged individuals selfishly pursuing private, especially economic rights without regard to community, the republican paradigm posited public-spirited citizens actively participating in small republics so that civic virtue would combat governmental corruption. As long as political authority remained

subordinate to political liberty, citizens in such republics would be free to develop their faculties as human beings by promoting the public good.

Republican writings were immensely popular in the American colonies, where people came to understand the conflict with the mother country in terms of an eternal struggle between virtuous citizens trying to sustain public liberty and corrupt, selfish rulers using arbitrary power to quash it. This ideological framework also affected American political thought during the Founding era when both Federalists and Jeffersonians used the language of republicanism to denounce their opponents. The two parties differed dramatically, however, in their conceptions of republicanism. These differences can help us better appreciate the controversy surrounding the Sedition Act of 1798 and how it sparked a revolution in our understanding of the place of dissent in a republican government.

The Seeds of Suppression: Federalist Fears of Political Dissent

Although Federalists as well as Jeffersonians professed dedication to republicanism, they disagreed over how to ensure it. Distrusting the judgement of the common people and fearing their passions, Federalists believed that free government required popular deference to the rule of the "rich and well-born" who would use vigorous, centralized government to promote stability and thus the public good by means of a large commercial republic. Jeffersonians, by contrast, defined republicanism as rule by the common people through a decentralized government that would promote the virtues of agrarianism and individual freedom by resisting political consolidation. To Jeffersonians, Federalists were "monarchists" in republican garb. To Federalists, Jeffersonians, were "mobocrats" rather than democrats. Each party saw the other as perverting the principles of republicanism and scheming with a foreign power to overthrow the American regime. The Jeffersonians were especially fearful the the Federalists would use the excuse of war to undermine popular government (see Hofstadter, 1969, chapter 3).

The threat of war between the United States and France in 1798 further exacerbated the already bitter division between the politically dominant Federalists, who generally sympathized with aristocratic Britain, and the increasingly numerous Jeffersonian-Republicans, whose hearts went out to the new French republic. Moreover, the steady influx of political and economic refugees from Europe strengthened the Republicans, as these emigrants felt little regard for the elitism of the Federalists, in contrast to the more egalitarian tenets of the Jeffersonians (see Smith, 1956, part 1).

Commonwealth

Consequently, the more reactionary Federalists sought measures that would at once strike at the "Jacobins" of the French Directory and pull the rug out from under the "democrats, mobocrats & all other kinds of rats" whose swelling ranks threatened the party with impending electoral defeat (quoted in Miller, 1960, pp. 228-229). The hopes of these Federalists were realized during the summer of 1798 when, without even waiting for a formal declaration of war against France, Congress passed four laws intended to stifle political dissent.

The capstone of this program, "An Act for the Punishment of Certain Crimes Against the United States," more commonly known as the Sedition Act, imposed heavy fines and imprisonment on anyone who should "write, print, utter or publish" any "false, scandalous and malicious" statements against the government of the United States, the President, or Congress with intent to "defame" them, to bring them into "contempt" or "disrepute," or to excite against them "the hatred of the good people of the United States" (Sedition Act, 1798). The Sedition Act punished the common law crime of "seditious libel," a vague, and variable offense defined by historian Leonard Levy as "defaming or condemning or ridiculing the government: its form, constitution, officers, laws, conduct, or policies, to the jeopardy of the public peace" (1985, p. 8). Under this harsh legal concept, scores of political dissenters had been prosecuted in England and the American colonies for what would today be called "political subversion" or threats to "internal security." With the Sedition Act the Federalists declared that the national government possessed the same power to punish its critics.

Furthermore, the Federalists equated "the government" with their own policies and politicians. As one scholar has put it, "by identifying their administration with the government, and the government with the Constitution, the Federalists concluded that criticism of their administration was an attempt to subvert the Constitution and to overthrow the government" (Smith, 1956, p. 420). For example, Samuel Chase, a justice of the United States Supreme Court and a staunch Federalist, contended that "if a man attempts to destroy the confidence of the people in their officers, their supreme magistrate, and their legislature, he effectively saps the foundation of the government" (quoted in Miller, 1951, pp. 86-87). The Federalists, in short, saw themselves as patriotic defenders of truth and order and their Republican opponents as scheming traitors plotting to hand over the nation to vile foreigners. Accordingly, the Federalists regarded vigorous enforcement of the Sedition Act as vital to the nation's security. They eventually brought 14 indictments, obtained 10 convictions, and almost

silenced the opposition press (see Miller, 1951; and Smith 1956, parts 2 and 3).

Equating dissent with discord and disagreement with disloyalty, the Federalists in essence made it a crime to criticize those in power. Although the First Amendment denied Congress power to abridge freedom of speech and press, the Federalists insisted that the proper definition of these rights was that given by the respected English legal authority, Sir William Blackstone:

The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every free man has an undoubted right to lay what sentiments he pleases before the public... but if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity (Blackstone, 1769, pp. 151-152).

Congressman Harrison Gray Otis of Massachusetts, one of the Federalist leaders responsible for the Sedition Act, accepted the Blackstonian position, telling the House of Representatives that freedom of the press "is nothing more than the liberty of writing, publishing, and speaking, one's thoughts, under the condition of being answerable to the injured party, whether it be the government or an individual, for false, malicious, and seditious expressions" (*Annals of Congress*, July 10, 1798, pp. 2148-2149). Representative Robert Goodloe Harper of South Carolina, who helped draft the Sedition Act, agreed with his colleague and asked:

Did this liberty of the press include sedition and licentiousness? Did it authorize persons to throw, with impunity, the most violent abuse upon the President and both Houses of Congress?...Every man possesse[s] liberty of action; but if he use[s] this liberty to the detriment of others...he [becomes] liable to punishment for this licentious abuse of his liberty (Annals of Congress, July 10, 1798, p. 2167).

The Federalist pamphleteers also contended that the Blackstonian definition of freedom of speech and press was the correct one. The most

Commonwealth

articulate of these writers, Judge Alexander Addison of Pennsylvania, noted that "this right of free communication of thoughts and opinions is, like all other rights, limited by responsibility for its abuse; and laws to prevent its abuse are not, in constitutional or just sense, restraints on the liberty of the press" (Addison, 1978, p. 9). To Judge Addison, freedom of the press meant "that any man may, without the consent of any other, print any book or writing whatever, being in this, as in all other freedom of action, liable to punishment, if he may injure an individual of the public" (Addison, 1798, p. 14). Indeed, the judge insisted that the Sedition Act supported a free press because "to censure the licentious is to maintain the liberty of the press" (Addison, 1798, p. 16).

Republicans in Rebellion: The Emergence of the New Libertarianism

The Republicans attacked the Sedition Act on three fronts. First, they invoked the cause of states' rights. Next, they repudiated the Blackstonian understanding of free expression. Finally, they offered their own theory of political dissent.

The Initial Debate: Limited National Power and States' Rights

Initially, the Republicans responded to the Federalist defense of the Sedition Act not by focusing on freedom of speech and press but by emphasizing states' rights and limited national power. Whatever might be the true definition of freedom of expression was in a sense irrelevant because the Constitution created a national government of limited enumerated powers, all powers not delegated remaining with the states as guaranteed by the Tenth Amendment. By this argument, the important words of the First Amendment were not "freedom of speech, or of the press" but "Congress shall make no law..." The central government was meant to be totally powerless with regard to freedom of expression, and the First Amendment was intended to make that point emphatic. Representative Nathaniel Macon of North Carolina asserted in Congress that "it was never understood that prosecutions for libels could take place under the General Government; but that they must be carried on in the State courts, as the Constitution gave no power to Congress to pass laws on this subject" (*Annals of Congress*, July 10, 1798, p. 2152). Representative Edward Livingston of New York agreed, adding that "there is a remedy for offences of this kind in the laws of every

state in the Union" (*Annals of Congress*, July 10, 1798, p. 2153). Congressman John Nicholas of Virginia summed up the argument succinctly:

In order to quiet the alarms of the people of the United States with respect to the silence of the Constitution as to the liberty of the press...one of the first acts of the Government was to propose certain amendments to the Constitution, to put this matter beyond doubt...On this account, the General Government has been forbidden to touch the press (*Annals of Congress*, July 10, 1798 p. 2139).

Thomas Jefferson, the titular head of the Republican party, used the states' rights position in his celebrated "Kentucky Resolutions" which, along with James Madison's Virginia Resolutions," formally protested the Sedition Act and urged the other states to repudiate it. Because the Constitution granted no power over speech or press to the national government, Jefferson reasoned, such authority was reserved to the states, which "retain to themselves the right of judging how far the licentiousness of speech and of the press may be abridged without lessening their useful freedom" (Elliot, 1907, pp. 540-541). His libertarian reputation notwithstanding, Jefferson never challenged the concept of seditious libel. As Leonard Levy has demonstrated, Jefferson "accepted without question the dominant view of his generation that government could be criminally assaulted merely by the expression of critical opinions that allegedly tended to subvert it by lowering it in the public's esteem" (1985, p 250). Once he became president, Jefferson encouraged the prosecution of several Federalist enemies for seditious libel. His only requirement was that sedition trials be prosecuted in the state courts (Levy, 1985, pp. 340-347).

The Federalists were not convinced by the Republicans' states' rights attack on the Sedition Act. To their way of thinking, all governments possessed an inherent right to self defense against words as well as actions that threatened their security. As Representative Otis put it in Congress, "every independent Government has a right to preserve and defend itself against injuries and outrages which endanger its existence; for unless it has this power, it is unworthy the name of a free Government, and must either fall or be subordinate to some other protection" (*Annals of Congress*, July 10, 1798, p. 2146). To suppose that the Constitution reserved the power to enact laws against seditious libel exclusively to the states, Judge Addison suggested, would be to suppose "that the government of the United States must, unless

Commonwealth

the individual states choose to offer it, be without defense against the most dangerous enemy that can attack it, slander; against which, if unrestrained, no government can support itself" (Addison, 1798, pp. 13-14). If the state governments could protect themselves against the evils of seditious libel, the Federalists reasoned, then surely the national government could not be denied this vital right. Asked General Henry ("Light-Horse Harry") Lee in the Virginia legislature, "Is government worth preserving? If not, let it be annulled. If it is, deny not to it the means of preserving itself" (*The Virginia Report*, 1850, p. 105).

Contrary to the Republicans' position that the First Amendment deprived the national government of all authority over freedom of speech and press, the Federalists contended that the Amendment actually supported a sedition law. While the amendment prohibited any law *respecting* religious freedom, they argued, with regard to freedom of speech and press it prohibited only laws *abridging* liberty of expression. Because seditious libel was not considered a legitimate form of expression under Federalists' Blackstonian understanding of freedom of speech and press, the national government was not restrained by the First Amendment from legislating against it. The Federalist minority in the Virginia legislature advanced this interpretation of the amendment in arguing unsuccessfully against adoption of Madison's "Virginia Resolutions:"

Congress is prohibited from making any law respecting a religious establishment, but not from making any law respecting the press. When the power of Congress relative to the press is to be limited, the word respecting is dropt, and Congress is only restrained from passing any law abridging its liberty. This difference of expression...manifests a difference of intention with respect to the power of the national legislature over those subjects (*Address of the Minority* 1799, p. 12).

Judge Addison also adopted this approach, arguing that "forbidding power to abridge, implies a previous general power over the subject, and leaves a power to punish an abuse of this freedom without abridging it" (Addison, 1800, p. 44). If the drafters of the First Amendment had intended to deprive the national government of all power to legislate with respect to freedom of speech and press, he insisted, they would have used language as explicit as that denying Congress authority to enact laws concerning religion.

James Madison, who had submitted the Bill of Rights to Congress for approval, replied that a "studied discrimination" of the phraseology of the first Amendment, rather than focus on its principles, risked obscuring the amendment's objectives. Both freedom of religion and freedom of expression, he said, "rest equally on the original ground of not being delegated by the Constitution, and consequently withheld from the [national] government" (*The Virginia Report*, 1850, p. 229). Any interpretation of the First Amendment "that would attack this original security for the one, must have like effect on the other," for "they are both equally secured...being both included in the same amendment, made at the same time, and by the same authority" (*The Virginia Report*, 1850, p. 229). In Madison's view, the difference in terminology was unimportant; the intention was the same: the national government could not restrain religion, speech, or press. The Sedition Act therefore could find no support in the First Amendment. On the contrary, it exceeded the limited powers of Congress and invaded the prerogatives of the states.

A Changing Emphasis: The Overthrow of Blackstone

Although the initial Republican response to the Sedition Act generally emphasized states' rights and the limited nature of national power under the Constitution, critics of the law occasionally took aim at the narrow Blackstonian notion of freedom of expression--even as they defended the right of the states to punish seditious libel (see *Annals of Congress*, July 10, 1798, pp. 2140-2141 and 2160-2161). This apparent inconsistency left the Federalists in a quandary. One anonymous pamphleteer in Virginia asked, "Will not such prosecutions under the state governments equally affect [freedom of expression] with like prosecutions under the general government?" (*An Address to the People*, 1799, pp. 54-55). Representative Otis agreed, pointing out that if the Sedition Act violated freedom of speech and press under the federal Constitution, then "each state has infringed upon its own constitution" since the states also guaranteed freedom of expression (*Annals of Congress*, July 10, 1798, p. 2149). While Republicans generally argued that seditious libel was a matter reserved to the states, many did so only as a tactical maneuver to try to undercut Federalist repression at the national level (Levy, 1985, pp. 301-308; but see Berns, 1970). Beneath the surface of the debate something much more radical was occurring: the emergence of a genuinely libertarian understanding of political dissent in a

Commonwealth

republican government that would repudiate entirely the crime of seditious libel.

Unlike Thomas Jefferson's "Kentucky Resolutions," which attacked the Sedition Act only from the perspective of states' rights, James Madison's "Virginia Resolutions" also condemned it on the basis of a libertarian conception of freedom of speech and press. Madison referred to the power of government to punish seditious libel as "a power which more than any other ought to produce universal alarm, because it is levelled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right" (*The Virginia Report*, 1850, p. 23). In later defending his resolutions, Madison contended that the Blackstonian definition of freedom of expression was unacceptable in the United States. Where "the people, not the government, possess the absolute sovereignty," he wrote, freedom of speech and press must be ensured "not only from the previous inspection of licensers, but from the subsequent penalty of laws." Any other notion of freedom of expression would be a "mockery" (*The Virginia Report*, 1850, p. 220).

The Republican pamphleteers soon picked up this idea. In New York, John Thomson called liberty of the press "the palladium of freedom, which if once destroyed, Liberty is no more" (Thomson, 1801, p. 8). Tunis Wortman, another New Yorker, referred to the notion of seditious libel as "the offspring of a Monarchy" and a "dangerous exotic" that "can never be reconciled to the genius and constitution of a Representative Commonwealth" (Wortman, 1800, p. 262). Of all human rights, Wortman continued, that of communicating one's sentiments is "the most sacred and inestimable" (Wortman, 1800, p. 146). It would be impossible to conceive "a more horrible and pernicious tyranny than that which would restrain the Intercourse of Thought" (Wortman, 1800, p. 146). From Virginia, James Ogilvie observed that "as moral and political truth does not visit the human mind by indirect inspiration or intuition, it can be discovered and diffused only by unshakled and conscientious discussion" (Ogilvie, 1798, p. 5). George Hay, son-in-law of James Monroe and a member of the Virginia legislature, went so far as to claim:

A man may say everything which his passion can suggest; he may employ all his time, and all his talents...in speaking against the government matters that are false, scandalous, and malicious...[S]urely freedom of the press...will not

permit a man to be punished, for publishing any opinion on any subject, and supporting it by any statement whatever (Hay, 1803, p. 25).

The Republicans based their new libertarianism on two points in particular: the need for an unrestricted flow of political information in a republican government, and the role of public opinion in supporting that government. As to the first point, they argued that if the people are to make intelligent choices in the voting booth, they must have complete and accurate knowledge of what office holders are doing, and they cannot have such knowledge if they are prevented from questioning the conduct of their political officials. Thus, after expressing confidence in the ability of the people to judge their own interests, Congressman John Nicholas told his colleagues that the press "should remain perfectly free to give them every information," for to restrict freedom of speech and press, he warned, "is striking at the root of free republican Government" (*Annals of Congress*, July 10, 1798, p. 2104). The connection between republicanism and the unimpeded flow of political information was crucial in Nicholas's view because in a free government the people have a "duty to elect all the parts of the Government, and, in this way, to sit in judgment over the conduct of those who have been heretofore employed" (*Annals of Congress*, February 25, 1799, p. 3006).

Further, Thomas Cooper of Pennsylvania asked, "How are the people in a representative government, to judge of the respective merits of those whom they are to reject or appoint to public situations, if [freedom of inquiry] be not granted?" Only through a broad diffusion of political information "will the electors be qualified to choose, and the persons chosen, to act, with superior discernment and ability" (Cooper, 1800, p. 81). James Ogilvie summed up the Republican case on this point:

Free discussion is the source, the safeguard and sanctuary of free government...In order to qualify the people, to discharge with wisdom and success their electoral duties, it is necessary that...everything interesting to their prosperity and welfare be submitted to the deliberate, unshackled and solitary scrutiny of superior genius and general reason. How otherwise can they distinguish between...those who pervert public trust, treasure, and power...and those who employ

Commonwealth

them to promote the real happiness of society? (Ogilvie, 1798, pp. 5-6).

The second part of the Republicans' new libertarianism focused on the role of public opinion in a free government. They argued that public opinion was the mainspring of popular government and could not be ignored without dire consequences. Tunis Wortman, for instance, warned that public opinion is "the vital principle of Civil Society: The healthful existence of a state requires that it should always possess a considerable latitude and extensive sphere of operation, and that it should never be approached without the utmost deference and circumspection" (Wortman, 1800, p.181; also see Cooper, 1800, pp. 11-15). John Taylor of Virginia concurred in this analysis but went further by recognizing that not only does public opinion shape government, but government often shapes public opinion. "If public opinion were to be directed by government, by means of fines, penalties, and punishments," he observed, "public opinion itself would be made the stepping stone for usurpation," and "the most dangerous effect would be the abolition of the right to examine public servants" (*The Virginia Report*, 1850, p. 27). And John Thomson feared that if government suppressed public opinion, "either it will drive the people into immediate acts of violence against the Government; or, if they silently submit, it will ultimately deprive the people of that free energy of thought, word, and action, which the consciousness of liberty and independence never fail to inspire." The government, he concluded, "will then cease to direct the public concerns of free men; and [it] will rule over a nation of degraded slaves" (Thomson, 1801, p. 58).

The most articulate Federalist response to the Republicans came from Judge Alexander Addison. Invoking republicanism was meaningless, he claimed, "unless it be meant to establish that because the sovereign American people can change their government when they please, every individual is at liberty...to incite the people to change their government whenever *he* pleases," or that it is "more an offense to abuse the government [in England] than to mislead the people here" (Addison, 1800, p. 41; italics in the original). To Addison, simply because a government is elected, it does not follow that freedom of expression should be less restrained. A broader degree of freedom of speech and press would give every individual "a right to misrepresent the character and conduct" of public officials, making it impossible for the voters to choose intelligently. To mislead the people where their power is limited poses few risks, but to mislead them "where they have *all* power, must produce the greatest possible mischief" (Addison, 1800, p.

42). Going beyond Blackstone's narrow definition of freedom of expression would "tend only to make the people miserable, to corrupt and destroy the government, to introduce anarchy, and, in the end, despotism" (Addison, 1800, p. 43).

Addison further argued that while the people's right of inquiry may be important, it cannot take precedence over the natural right of reputation, particularly that of individuals in public office. Reputation, is a kind of property that "every man, who has honestly acquired it, has a right to enjoy" (Addison, 1798, p. 6). It is especially important that those in public stations, "for the sake of the benefits we receive from them," have an unassailable right to "reputation, good name, and opinion" (Addison, 1798, p. 6.). Political discussion can never be so free as to allow debasement of the good reputation of those in public office, for to do so would risk undermining the confidence of the people in their governors and thus in their government. For Addison, the rights of the political community were subordinate to those of individuals, even when those individuals might profoundly affect the entire community and even when they were technically responsible to the community.

As for the Republicans' emphasis upon the importance of public opinion in government, Addison agreed with their premises but drew sharply different conclusions. "Speech, writing, and printing are the great director of human opinion," he observed, "and public opinion is the great director of human action. It can support the worst or topple the best government" (Addison, 1798, p. 18). Those who command the press command the country, for they will control public opinion, which controls everything else. Asserting that public opinion had brought about the French Revolution, Addison wondered if the specter of anarchy had now reached America. If so, he concluded, the only remedy was to harness public opinion in support of the government by vigorously enforcing the Sedition Act. Addison thus turned the Republican argument on its head. Because the people cannot be trusted to distinguish truth from falsehood, republican government requires less, not more, freedom of political inquiry.

The Revolution Completed: A New Theory of Political Dissent

The Republicans, however, would not be silenced. With the double-barreled argument of unlimited political inquiry and sovereign public opinion, they had cast aside the Blackstonian definition of freedom of expression and were ready to complete the construction of their new

Commonwealth

libertarianism by destroying the other tenets upon which the Federalist understanding of legitimate political dissent was founded. Their first victim was the concept of "licentiousness," which they rejected completely. The licentiousness of the press, John Thomson wrote, "is a term destitute of any meaning," for definitions of it have "uniformly proceeded from men who evidently wished nobody to enjoy the Liberty of the Press, but such as were their opinion" (Thomson, 1801, p. 7). George Hay reasoned that "if no man can tell where freedom stops, and licentiousness begins, it is obvious that no man can say, to what extent a law against licentiousness shall be carried." Consequently, "*no law can be made to restrain the licentiousness of the press,*" and it "*may do whatever it pleases to do...taking care, however, to do no injury to any individual*" (Hay 1803, pp. 22-23).

Ironically, the Republicans' next target was something libertarians had long sought but would now reject as too confining: the idea of "truth" as a defense against a charge of seditious libel. This concept prevented conviction if the challenged utterance or writing could be shown to be incontrovertibly true. The catch was that "truth" protected only facts, for they could be proved; but opinions would not be proved to be true, their acceptability being left to the whims of juries. Because a jury of twelve people could rarely be found to agree on the truth of any one opinion, Congressman Nicholas noted, "chance must determine whether political opinions are true or false, and it will not unfrequently happen, that a man will be punished for publishing opinions...merely because accident, or design, has collected a jury of different sentiments" (*Annals of Congress*, February 25, 1799, pp. 3005-3006). John Thomson thought trying to determine the truth of opinions would be as absurd as "deciding which was the palatable food, agreeable drink, or beautiful color" (Thomson, 1801, p. 68). In strikingly modern vein, George Hay remarked that "there is truth in opinion, as well as in fact" (Hay, 1803, p. 26). This idea was a far cry from the claim of Alexander Addison that "truth has but one side: and listening to error and falsehood is indeed a strange way to discover truth" (Addison, 1798, p. 23).

Anticipating by 60 years John Stuart Mill's classic defense of freedom of expression in his book *On Liberty*, the Republicans radically transformed the concept of "truth" with respect to freedom of speech and press, making it a tool not for narrowing but for broadening expression. "Diversity of sentiment," wrote Tunis Wortman, "is far from being unfavourable to the eventual reception of Truth. It produces Collision, engenders Argument, and affords exercise and energy to the intellectual powers; it corrects our errors, removes our prejudices, and strengthens our

perceptions" (Wortman, 1800, p. 123). John Thomson captured the spirit of the new libertarianism when he implored: "Let then public discussion be unrestrained. The ideas of the first proposer may be improved on by succeeding writers, and from collision of sentiment, truth will ultimately be produced...Coercion may *silence*, but it never can *convince*" (Thomson, 1801, pp. 79 and 83).

Having swept aside the Blackstonian definition of freedom of speech and press, the idea that political opinions could be licentious, and the defense of truth against prosecution for seditious libel, the Republicans were ready to submit their own conception of the legitimate bounds of political dissent in a free government. They had been arguing that not only was political dissent harmless, but that it was beneficial because it ultimately resulted in truth. It was not critical opinions that should be feared, but rather violent actions based on those opinions. Accordingly, the Republicans offered a kind of "clear and present danger" test for judging the propriety of political dissent in place of the Federalists' more repressive "bad tendency" approach. John Thomson stated the new formula this way:

Political opinions never can be destructive of social order, or public tranquility, if allowed a free operation. The law is at all times sufficiently energetic to punish disturbers of the public peace. When men are found guilty of this, let them be punished; it is well. It is not then punishing *opinion*, it is punishing actions injurious to the peace of the community (Thomson, 1801, p. 79).

Tunis Wortman also believed that because "our Natural liberty terminates at the precise point at which our conduct becomes injurious," government should be "positive and stern with regard to every act of open disorder" but that "nothing more can be required" (Wortman, 1800, pp. 140 and 253). Congressman Nicholas summed up the new attitude toward political dissent when he told the House of Representatives that the whole notion of seditious libel in a republican nation was "obsolete" and "inconsistent with the nature of our Government" because elected officials should not have "power to restrain animadversions on public measures" (*Annals of Congress*, February 25, 1798, p. 3014). A new age had begun in the history of American constitutionalism.

The New Libertarianism and the Liberation of Republican Government

The battle between the Federalists and Jeffersonians over the Sedition Act was the logical culmination of the war between power and liberty that was so central to republican thought. Just as the American revolutionists had viewed the British as tyrants scheming against liberty, so too did the Jeffersonians regard the Federalists as corrupt monarchists, drunk with power, conspiring to overthrow the principles of freedom embodied in a popular constitution by forcing into slavery those citizens who dared to question autocratic rule. While Federalists saw power as necessary for republican government, Jeffersonians saw power as its nemesis. As Forrest McDonald has argued, the Federalists "trusted themselves and therefore trusted power if it was in their hands," whereas the Jeffersonians "did not trust themselves and therefore did not trust power in anyone's hands" (1985, p. 205). The safest depository for power, the Jeffersonians believed, was the people. This was the essence of republicanism, and it triumphed in what Jefferson called the "revolution" of 1800.

To Gordon Wood the controversy over the Sedition Act "marked the crucial turning point in the democratization of the American mind. It fundamentally altered America's understanding not only of its intellectual leadership but of its conception of public truth" (1977, p. 123). As a result, Americans believe more firmly that in a popularly based regime political truth is to be found by the people, not imposed by the government. Citizens should be free to criticize their government. Citizens should be free to criticize their government's notion of political truth without fear of being punished for subversion, for there is a difference between political opposition and political insurrection. So long as the critics of those in power do not attempt to overthrow the government by force, their dissent, no matter how incisive or derisive, must be tolerated, otherwise governmental authority becomes authoritarian government. In liberating the American mind, the debate over the Sedition Act thus liberated our understanding of republican government as well.

As the nation expanded after 1800 and new political issues emerged, ever more voices of dissent were raised against perceived threats to liberty from abusive governmental power. Such cries came first, ironically, from Federalists in commercially dominated New England, some of whom advocated secession in response to Jefferson's Embargo of 1807 and Madison's War of 1812. As the crisis over sectionalism and slavery intensified after 1820, talk of nullification and secession moved south. Ever

since these early instances of protest, the right of political dissent, while often controversial, has been regarded as crucial in protecting liberty against arbitrary government. The clash over the Sedition Act therefore not only sparked a dramatic breakthrough in libertarian thought, but also secured a vital pillar in the edifice of American constitutionalism.

REFERENCES

- ADISON, Alexander. (1778) *Liberty of Speech and of the Press: A Charge To the Grand Juries of the Fifth Circuit of the State of Pennsylvania*. Washington, PA: Printed by John Colerick.
- _____. (1800) *Analysis of the Report of the Committee of the Virginia Assembly*. Philadelphia: Printed by Zachariah Poulson.
- Address of the Minority in the Virginia Legislature to the People of that State; Containing a Vindication of the Constitutionality of the Alien and Sedition Laws*. 1799.
- An Address To The People of Virginia, Respecting the Alien and Sedition Laws; By a Citizen of the State*. 1799. Richmond: Printed by Augustine Davies.
- [*Annals of Congress*]. *The Debates and Proceedings in the Congress of the United States*. 1834-1856. 42 vols. Washington: Gales and Seaton.
- BAILYN, Bernard. (1967) *The Ideological Origins of the American Revolution*. Cambridge, MA: Harvard University Press.
- BERNS, Walter. (1970) Freedom of the Press and the Alien and Sedition Laws: A Reappraisal. *Supreme Court Review*. 1970: 109-159.
- BLACKSTONE, William. (1769) *Commentaries on the Laws of England*. Vol. 4. London: Clarendon Press.
- COOPER, Thomas. (1800) *Political Essays*, 2nd ed. Philadelphia: Printed by Robert Campbell.
- ELLIOT, Jonathon, ed. (1907) *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*, Vol. 4. Philadelphia: J.B. Lippincott.
- HARTZ, Louis. (1955) *The Liberal Tradition in America*. New York: Harcourt, Brace & World.
- HAY, George. (1803) *An Essay On The Liberty of the Press, Respectfully Inscribed To the Republican Printers Throughout the United States*. Richmond: Printed by Samuel Pleasants.

Commonwealth

- HOFSTADTER, Richard. (1969) *The Idea of a Party System*. Berkely: University of California Press.
- HORWITZ, Robert, ed, (1977) *The Moral Foundations of the American Republic*. Charlottesville, VA: University Press of Virginia.
- LEVY, Leonard. (1985) *Emergence of a Free Press*. New York: Oxford University Press.
- MCDONALD, Forrest. (1985) *Novus Ordo Seclorum: The Intellectual Origins of the Constitution*. Lawrence, KS: University Press of Kansas.
- MILLER, John C. (1951) *Crisis in Freedom*. Boston: Little, Brown.
- _____. (1960) *The Federalist Era*. New York: Harper and Row.
- OGILVIE, James. (1798) *A Speech Delivered in Essex County In Support of a Memorial, Presented To the Citizens of that County And Now Before the Assembly On The Subject of the Alien and Sedition Acts*. Richmond: Printed by John B. Dixon.
- POCOCK, J.G.A. (1975) *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*. Princeton, NJ: Princeton University Press.
- [Sedition Act]. An Act for the Punishment of Certain Crimes Against the United States. 1798. 1 Statutes at Large 596.
- SMITH, James Morton. (1956) *Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties*. Ithaca: Cornell University Press.
- THOMSON, John. (1801) *An Enquiry, Concerning the Liberty, and Licentiousness of the Press, and the Uncontrollable Nature of the Human Mind*. New York: Printed by Johnson and Stryker.
- The Virginia Report of 1799-1800, Touching the Alien and Sedition Laws; Together With the Virginia Resolutions of December 21, 1798, The Debates and Proceedings Thereon in the House of Delegates of Virginia, and Several other Documents*. (1850) Richmond: Printed by J.W. Randolph.
- WOOD, Gordon S. (1969) *The Creation of the American Republic, 1776-1787*. Chapel Hill, NC: University of North Carolina Press.
- _____. (1977) The Democratization of Mind in the American Revolution. In Horwitz, ed. pp. 102-128.
- WORTMAN, Tunis. (1800) *A Treatise Concerning Political Enquiry, and the Liberty of the Press*. New York: Printed by George Forman.