

The Sedition Act of 1798

For the first few years of Constitutional government, under the leadership of George Washington, there was a unity, commonly called Federalism that even James Madison (the future architect of the Republican Party) acknowledged in describing the Republican form of government-- " And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit and supporting the character of Federalists." Although legislators had serious differences of opinions, political unity was considered absolutely essential for the stability of the nation. Political parties or factions were considered evil as "Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority..." Public perception of factions were related to British excesses and thought to be "the mortal diseases under which popular governments have everywhere perished." James Madison wrote in Federalist Papers #10, "By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adversed to the rights of other citizens, or to the permanent and aggregate interests of the community." He went on to explain that faction is part of human nature; "that the CAUSES of faction cannot be removed, and that relief is only to be sought in the means of controlling its EFFECTS."

The significant point Madison was to make in this essay was that the Union was a safeguard against factions in that even if "the influence of factious leaders may kindle a flame within their particular States, [they will be] unable to spread a general conflagration through the other States." What caused men like Thomas Jefferson and James Madison to defy tradition and public perceptions against factions and build an opposition party? Did they finally agree with Edmund Burkes' famous aphorism: "When bad men combine, the good must associate; else they will fall, one by one, an unpitied sacrifice in a contemptible struggle?" Did the answer lie in their opposition with the agenda of Alexander Hamilton and the increases of power both to the executive branch as well as the legislative branch of government? Hamilton pushed for The Bank of the United States, a large standing Army raised by the President (Congress was to raise and support armies,) a Department of Navy, funding and excise taxes, and, in foreign policy, a neutrality that was sympathetic to British interest to the detriment of France. Many legislators, especially those in the south, were alarmed to the point that a separation of the Union was suggested as the only way to deal with Hamilton's successes. Many were afraid that the army would be used against them as it had during the Whiskey Rebellion. Southerners saw the taxes to support a new treasury loan favoring "pro-British merchants in the commercial cities," and unfairly paid by landowners in the South. These issues as well as neutrality issues between France, England, and the United

States were the catalyst for the forming of the Republican Party. The French and English conflict caused many problems with America's political system. The English "Order of Council" and the French "Milan Decree" wreaked havoc with America's shipping and led to Jay's Treaty of 1794. Jay's Treaty was advantageous to America and helped to head off a war with Britain, but it also alienated the French. The French reacted by seizing American ships causing the threat of war to loom large in American minds. President Adams sent three commissioners to France to work out a solution and to modify the Franco-American alliance of 1778, but the Paris government asked for bribes and a loan from the United States before negotiations could even begin. The American commissioners refused to pay the bribes and they were denied an audience with accredited authorities and even treated with contempt. Two of the commissioners returned to the United States with Elbridge Gerry staying behind to see if he could work something out. This became known as the XYZ affair and was the beginning of an undeclared naval war between France and the United States. The XYZ affair played right into the hands of the Federalist Party. They immediately renounced all treaties of 1788 with France and began their agenda of creating a large standing army and a Navy Department to deal with the threat of an American-French war. Fear and patriotism were fanned and a strong anti-French sentiment swept the land. Then a gem of a caveat was thrown into the Federalist hands when Monsieur Y boasted that "the Diplomatic skill of France and the means she possess in your country, are sufficient to enable her, with the French party in America, to throw the blame which will attend the rupture of the negotiations on the Federalist, as you term yourselves, but on the British party, as France terms you." This boast was to cause suspicion and wide spread denunciation of the Republican Party and its leaders. Senator Sedgwick, majority whip in the Senate, after hearing of the XYZ Affair, said, "It will afford a glorious opportunity to destroy faction. Improve it." Hamilton equated the public's perception of the Republican's opposition to the Federalist's agenda like that of the Tories in the Revolution. All in all, this boast began the process that became the Alien and Sedition Acts of 1798. The Republicans debated against the bills for about a month, but the Federalist had the votes. A background of fear helped keep the public silent and perhaps somewhat approving to the loss of some personal freedoms, as nobody wanted to be accused as a Jacobean. In May of 1778, President Adams declared a day of prayer and fasting. Many thought that the Jacobeans were going to use that day to rise up in insurrection and "cut the throats of honest citizens." They even thought they were going to attack President Adams and citizens of Philadelphia came out by the hundreds to protect him. Federalist saw this as a demonstration of support for the government. Those who spoke against the Sedition bill were accused of being in league with the Jacobeans. Edward Livingston, in opposing the bill said, "If we are ready to violate the Constitution, will the people submit to our unauthorized acts? Sir, they ought not to submit; they would deserve the chains that our measures are forging for them, if they did not resist." The Federalist accused Livingston of sedition because of his implied threat of

popular rebellion; a practice seen in future debates when unlawful power was to be enforced. Republican newspapers were railing against the Federalist and especially against the Sedition bill. The Aoura was the leading Republican publication and Benjamin Bache was its editor. Baches ability to get the story out caused much consternation among Federalist. Harrison Gray Otis said that Baches' writing influenced even intelligent people, "What can you expect from the gaping and promiscuous crowd who delight to swallow calumny..?" The Federalist needed the Sedition bill to shut down the Republican presses and Bache played right into their hands with his publication of Tallyrand's conciliatory letter to the American envoys before the President had even seen it.

Republicans insisted that this was a journalistic scoop that would lead to peace because France was willing to negotiate with Edmund Gerry. The Federalist wanted Bache to explain how he had received a letter that the President hadn't even seen yet. They began to accuse him of being in league with France, an agent of Tallyrand and an enemy of the people of the United States. The administration was so incensed with Bache that they didn't wait for passage of the Sedition bill, but had him arrested for treason on June 27, 1778. From the very beginning Republican leaders recognized that the Sedition bill was primarily directed toward the destruction of any opposition to the Federalist Party and its agenda. Albert Gallatin said the Sedition Act was a weapon "to perpetuate their authority and preserve their present places." Proof that this bill was politically motivated became obvious when the House voted to extend the act from the original one year proposed to the expiration of John Adams term, March 3, 1801. The States response to the passing of the Sedition Act was mixed. Kentucky and Virginia each responded with acts basically nullifying the Congressional act, but other states accepted the Congress taking authority from what had been a state function. The public response initially appeared mixed. British common law seemed to have preconditioned many to accept a limitation of their personal freedoms. The victory of the Republicans, who ran on a platform of anti-sedition, in the election of 1800 showed that Americans were much more interested in personal freedom than the aristocratic Federalist thought. What would happen if Congress submitted a Sedition Bill today as they did in 1778? With our established two-party system (in marked contrast to their conceptions of factions), the freedom of press as a well developed principle, and freedom of speech the cornerstone in American's sense of liberty; it seems that there would be a major revolt. Are there any instances in 20th century history that compares to the Sedition Act's flagrant disregard of the First Amendment? No government actions seem so blatantly unconstitutional as the Sedition Act of 1798; but, there are many actions since then that have caused much more personal pain than the twenty-seven persons convicted under the Sedition Act. In times of war it is understood that many personal liberties may be curtailed, especially for enemy aliens living in the United States. The War Relocation Authority signed by President Roosevelt caused thousands of enemy aliens as well as Japanese- American citizens to lose everything as they were interned in concentration camps throughout the West. These

Americans were told that if they were true patriotic citizens they would go without complaining. If they were to complain then that was prima facie evidence that they were not loyal citizens. In June of 1940, America's fear of German aggression led to the enactment of the Smith Act. Much like the Alien and Sedition Act it required all aliens to be registered and fingerprinted. It also made it a crime to advocate or teach the violent overthrow of the United States, or to even belong to a group that participated in these actions. The United States Supreme Court upheld the constitutionality of the law in the case of eleven communist (Dennis v United States.) This decision was later modified in 1957 (Yates v United States.) The Court limited conviction to direct action being taken against government, ruling that teaching communism or the violent overthrow of government did not in itself constitute grounds for conviction. Another instance of governmental infringement of the liberties of American citizens is the well known Senate Sub-committee on un-American Activities headed by Joseph McCarthy. Thousands of people lost their livelihood and personal reputations were shattered by innuendo, finger pointing, and outright lies. As in earlier instances of uncontrolled excesses by people in government, guilt was assumed and protestations of innocence were evidence that "something" was being hidden.

In 1993, rumblings were heard from the Democratic controlled Congress that there needed to be fairness in broadcasting. If one viewpoint was shared, they felt the opposing viewpoint must be given fair time to respond. This was facetiously called the "Rush Act" in response to the phenomenal success of conservative radio talk show host, Rush Limbaugh. As in the 1790's when Republicans formed newspapers to counteract the Federalist control of the press; many conservatives felt that the few conservative broadcasters and programs had a long way to go before they balanced the liberal press. Fortunately, as in the 1800 election, Republicans gained control of Congress in 1992 and the "Rush Act" died a natural death. Recently many Americans have become concerned with domestic terrorism. Waco, the Oklahoma Federal Building, and now the Freemen in Montana have caused citizens and legislators alike to want something done. The House of Representatives just approved HR2768. This bill will curtail many liberties for American citizens as well as Aliens. The following are eight points made by the ACLU concerning this bill:

1. Broad terrorism definition risks selective prosecution
2. More illegal wiretaps and less judicial control will threaten privacy
3. Expansion of counterintelligence and terrorism investigations threatens privacy
4. The Executive would decide which foreign organizations Americans could support
5. Secret evidence would be used in deportation proceedings

6. Foreign dissidents would be barred from the United States

7. Federal courts would virtually lose the power to correct unconstitutional Incarceration

8. Aliens are equated with terrorists

This bill has many points in common with the Alien and Sedition Acts of 1798, the Smith Act of 1950, the McCarran Act of 1950, and the Executive Order of Feb.19, 1942 that led to War Relocation Authority. Each one of these actions were taken when fear controlled the public and an agenda controlled the people in authority. Thankfully, the American people have the Constitution and the Bill of Rights to bring them back from the edge, and to force those in positions of responsibility to accountability. The responsibility of government lies with the governed. If the American people react to trying situations and events in fear, then a general malaise and sense of helplessness will permeate the collective American consciousness. The abdication of personal responsibility erodes liberty, creating an atmosphere of dependency, that leads to bigger government and its pseudo security. Edward Livingston's statement, "If we are ready to violate the Constitution, will the people submit to our unauthorized acts? Sir, they ought not to submit; they would deserve the chains that our measures are forging for them, if they did not resist," serves as a timely warning to Americans today.