

1025

The Alien and Sedition Acts of 1798:

Balancing Rights and Responsibilities in Times of Crisis

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The United States Declaration of Independence proclaims that we all have three unalienable rights: life, liberty, and the pursuit of happiness.¹ Soon after its founding, however, the United States was confronted with a serious crisis as the individual rights² of its citizens, which had so recently been fought for, were undermined by the government's responsibility to provide security.³

In 1795, the U.S government signed the "Jay Treaty" with England, which increased trade between the two countries, but resulted in deteriorating relations with France.⁴ The U.S. was on the brink of war with France, and fear of the French spread rapidly throughout the country.⁵

Because of this fear, and under the guise of patriotism, in 1798 President Adams and the Federalist Party decided to adopt the Alien and Sedition Acts, giving the government great power to restrict individual rights.⁶ This decision was the first major opportunity for our government and citizens to ask how far security could go without

¹ "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." Declaration of Independence, at para. 2, (July 4, 1776), National Archives, Washington D.C.

² For example, the First Amendment to the U.S. Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Bill of Rights to the U.S. Constitution, National Archives, Washington D.C.

³ Section 8 of the Constitution states that "Congress shall have Power to ... provide for the common Defence..." Constitution of the United States, National Archives, Washington D.C.

⁴ The terms of the Jay Treaty were first published in the *Aurora* newspaper on July 29, 1795, based upon the anonymous leaked information from "a Citizen." See *Aurora General Advertiser*, July 29, 1795, No. 1421, Serial and Government Publication Division, Library of Congress ("Mr. Bache, I have been daily hoping to see in the public prints a copy of the late treaty with Britain ...").

⁵ Miller, John C., Crisis in Freedom, the Alien and Sedition Acts, (Little Brown & Co. 1951), at p. 4. Looking back on the crisis, President Adams referred to the potential for mob action, stating that "my domestics, in frenzy, [were] determined to sacrifice their lives in my defense." See Carey, George W., ed., The Political Writings of John Adams (Regnery Publishing, Inc. 2000), Introduction, at p. xxiv.

⁶ Miller, John C., Crisis in Freedom, the Alien and Sedition Acts, (Little Brown & Co. 1951), at p. 5.

compromising liberty. The balancing act between these two competing principles, rights versus responsibilities, remains as relevant now as it was more than two centuries ago.⁷

Rights in Times of Crisis: Who should prevail?

"Those who would give up essential liberty, to purchase a little temporary safety, deserve neither liberty nor safety."
-Benjamin Franklin⁸

Throughout our history we have found that it is difficult to balance liberty and security, especially in times of crisis. If people are given too much freedom, anarchy could result; conversely, if the government goes too far in its exercise of security, we might compromise an "unalienable" right. This problem becomes even more difficult in times of crisis. When people get afraid, they want protection. But how far can the government go in exercising its responsibilities without jeopardizing the people's rights?

The Alien and Sedition Acts provided the first real test for the U.S. government and its citizens on this issue. Even today, the government and people struggle with the balance between an individual's rights, such as the right to privacy or free speech, and the government's responsibility for security, such as through monitoring cell phone calls.⁹

⁷ See, for example, the recent case of *Hassan et al. v. The City of New York*, Case No. 2:12-cv-03401 (D. N.J. Feb. 20, 2014), in which the Court ruled that while an ongoing surveillance program of Muslims may have affected the Muslim community, "the motive for the [surveillance] Program was not solely to discriminate against Muslims, but rather to find Muslim terrorists hiding among ordinary, law-abiding Muslims." See also Scott McClellan, former White House Press Secretary for President George W. Bush. In-person interview by author in Austin, Texas, on March 20, 2014 ("the pendulum could swing back the other way now, to address the constitutional issues").

⁸ Benjamin Franklin, addressing the Pennsylvania Assembly in the *Reply to the Governor* printed in "Votes and Proceedings of the House of Representatives," 1755-1756 (Philadelphia 1756), pp. 19-21.

⁹ See Schneier, Bruce. "It's Time to Break Up the NSA," CNN.com, February 20, 2014 ("the NSA can ... do an end-run around congressional oversight, legal due process and domestic laws [which] is an affront to our Constitution and a danger to our society"); see also floor speech by Rep. Lloyd Doggett (D-Tex.), U.S. House of Representatives, Washington D.C., on July 21, 2005 ("Real patriots *do not* surrender our freedom, unless there is absolutely no other way to protect our lives") (obtained from Rep. Doggett's office on March 20, 2014).

Republicans vs. Federalists: Problems with the French

*"Medusa's snakes are not more venomous than the wretches
who are seeking to bend to the views of France"*

-A Federalist¹⁰

The United States government secretly signed the Jay Treaty with England in 1795.¹¹ This treaty promoted peace and trade between the two countries. After hearing about this treaty, France was outraged, since it was the historic enemy of England. In response, President John Adams sent three U.S. representatives (C.C. Pinckney, John Marshall, and Elbridge Gerry)¹² to meet with the committee in charge of the government of revolutionary France, known as the "Directory." Although many members of the Directory were furious and refused to see Pinckney, Marshall or Gerry, the U.S. delegates eventually met with three agents of the French foreign minister of the revolutionary government. The three French agents were Mr. Hottinguer, Mr. Bellamy, and Mr. Hauteval, who eventually became known as "X, Y, and Z" to the American public.¹³ France was demanding that the U.S. continue to pay its debts to the new French republic, while the U.S. contended that it did not have to pay debts owed to the overthrown French monarch.¹⁴ In addition, the three French agents asked for payment to the French foreign

¹⁰ Miller, John C., Crisis in Freedom, the Alien and Sedition Acts, (Little Brown & Co. 1951), at p. 13.

¹¹ Pierce Butler notified James Madison that the treaty passed the Senate on June 24, and said "I wish it may not sow the seeds of future discord." Letter from Pierce Butler to James Madison, June 26, 1795. Manuscript, James Madison Papers, Manuscript Division, Library of Congress. John Jay, who negotiated the treaty, also knew that troubles still remained (In a letter to James Duane on September 16, 1795, Jay said "The attempts of the French to plunge us into war were well known... they would not cease to be hostile to an amicable settlement of our differences with Great Britain"). See Johnston, Henry P., ed., The Correspondence and Public Papers of John Jay, vol. IV (G.P. Putnam's Sons 1893), at p. 192.

seemed to think that the crisis would not end with

¹² Miller, John C., Crisis in Freedom, the Alien and Sedition Acts, (Little Brown & Co. 1951), at p. 21.

¹³ Ibid. at p. 4.

¹⁴ Mays, Terry M., Historical Dictionary of the American Revolution (Scarecrow Press 2010), at introduction, p. xlvi ("The United States ... announced that it was not repaying debts owed to the overthrown French monarchy").

minister in order for the U.S. representatives to meet with the French government in the first place.¹⁵

When the XYZ correspondence was published in the United States, people were infuriated by the French demands. Patriotism swept throughout the nation and Americans were ready to fight back.¹⁶ One popular slogan was “millions for defense, but not one cent for tribute,”¹⁷ as Americans rejected the idea of bribery.¹⁸

Unlike the rest of the country, the Republican Party still saw France as an ally and friend.¹⁹ Republicans celebrated French military victories, toasted French generals, and even referred to each other as “citizen.”²⁰ Soon after the XYZ Affair, as it was then called, France began seizing ships flying the American flag.²¹ This was the beginning of the undeclared naval war with France, known as the “Quasi-War.”

While the country feared war with France, the Federalist Party, which controlled the U.S. government, planned to increase its popularity and destroy its opposition in the Republican Party.²² The Federalist Party knew that to win the election of 1800, it had to

¹⁵ Smith, James M., Freedom's Fetters, the Alien and Sedition Acts and American Civil Liberties, (Institute of Early American History and Culture 1956), at p. 6.

¹⁶ Miller, John C., Crisis in Freedom, the Alien and Sedition Acts, (Little Brown & Co. 1951), at p. 4; *see also* Allen, Gardner W., Our Naval War with France, (Houghton Mifflin 1909), at pp.38-39 (regarding preparation for war and ship building program).

¹⁷ Smith, James M., Freedom's Fetters, the Alien and Sedition Acts and American Civil Liberties, (Institute of Early American History and Culture 1956), at p. 8. This slogan became very popular and the Federalists used it for anti-French propaganda.

¹⁸ Abigail Adams believed that President Adams' speech on the subject of France had “appeared like a star emerging from the storm-threatening clouds, and the patriotic fears of all Americans have subsided.” Letter from Abigail Adams to William Shaw, December 23, 1798. Manuscript, Shaw Family Papers, Manuscript Division, Library of Congress, Washington D.C.

¹⁹ Miller, John C., Crisis in Freedom, the Alien and Sedition Acts, (Little Brown & Co. 1951), at p. 5.

²⁰ Ibid. at 7-8; *see also* Brown, Wail, John Adams and the American Press: Politics and Journalism at the Birth of the Republic (McFarland & Co. 1995), at p. 16.

²¹ Smith, James M., Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties (Cornell University Press 1956), at p. 5.

²² George Washington wrote to Alexander Hamilton, saying that “differences in political opinions are as unavoidable as, to a certain point, they may perhaps be necessary.” Letter from George Washington to Alexander Hamilton, August 26, 1792. Manuscript, George Washington Papers, Manuscript Division, Library of Congress, Washington D.C. Washington later warned of the effect of political parties in his

make the Republicans as unpopular as the loyalists had been in the American Revolution.²³ The XYZ Affair allowed the Federalists to use the anti-French feelings sweeping the country to paint the Republicans as disloyal traitors and “un-American.” Claiming concern for the national welfare and for “saving the country from internal enemies,”²⁴ the Federalists enacted four laws known as the “Alien and Sedition Acts of 1798.”

The Alien and Sedition Acts of 1798

“[The Federalists] are seeking to excite a fervor against foreign aggression only to establish tyranny at home; that like the arch traitor, we cry ‘Hail Columbia’ at the moment we are betraying her to destruction.”
-Edward Livingston²⁵

In 1798, President John Adams signed the Alien and Sedition Acts,²⁶ which included four separate bills, each with a different goal. The overall purpose of the acts, according to the Federalists, was to protect the United States from foreign aggression, terrorism and internal enemies. The “enemies” targeted by the Acts were mainly the French and the Irish.²⁷

The first act, the “Naturalization Act,” signed on June 18, required “aliens” to be residents of the United States for fourteen years instead of five in order to become citizens:²⁸

Farewell Address, stating that they lead to “a more formal and permanent despotism,” and “incline the minds of men to seek security and repose in the absolute power of an individual.” George Washington, September 17, 1796, Farewell Address. George Washington Papers at the Library of Congress, 1741-1799, Letterbook 24. Also published in *Claypoole's American Daily Advertiser*, September 19, 1796, No. 5444, at col. 4, Serial and Government Publications Division, Library of Congress, Washington D.C.

²³ Miller, John C., Crisis in Freedom, the Alien and Sedition Acts. (Little Brown & Co. 1951), at p. 10.

²⁴ Ibid. at 3-4.

²⁵ Ibid. at 54.

²⁶ Peterson, Merrill D., Adams and Jefferson, A Revolutionary Dialogue, (University of Georgia Press), at p. 78.

²⁷ Ibid. at 80; see also McCullough, David, John Adams (Simon & Schuster 2001), at p. 505.

²⁸ “An Act to Establish an Uniform Rule of Naturalization” (Naturalization Act), Fifth Congress, Session II (1798), Library of Congress, U.S. Statutes at Large, Ch. 54, at p. 566-569.

Section 1. ... no alien shall be admitted to become a citizen ... unless ... he shall have declared his intention to become a citizen ... five years, at least, before his admission, and shall ... declare and prove ... that he has resided within the United States fourteen years, at least, and within the state or territory where, or for which such court is at the time held, five years, at least ...

The second bill was the “Alien Act,” signed on June 25, which authorized the President to deport any aliens who were “dangerous to the peace and safety of the United States”:²⁹

Section 1. ... it shall be lawful for the President of the United States ... to order all such aliens as he shall judge dangerous to the peace and safety of the United States... to depart out of the territory of the United States ...

The “Alien Enemies Act,” passed on July 6, permitted wartime arrest, imprisonment, and deportation of any alien subject to an enemy power:³⁰

Section 1. ... In case of war, or actual threatened invasion... all natives, citizens, denizens, or subjects of the hostile nation or government, being males of the age of fourteen years and upwards, who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured and removed, as alien enemies...

The “Sedition Act,” enacted on July 14, stated that the publication of “any false, scandalous, and malicious writing,” was a high misdemeanor punishable by a monetary fine and imprisonment,³¹ in direct contrast to the Bill of Rights:

Section 2. ... if any person shall write, print, utter or publish ... any false, scandalous and malicious writing or writings against the government ... or the President ... with intent to defame the ... government, ... or to bring them ... into contempt or disrepute; or to excite against them ... the hatred

²⁹ The Alien Act, June 25, 1798; Fifth Congress; Enrolled Acts and Resolutions; General Records of the United States Government; Record Group 11; National Archives, Washington D.C. (*see also* United States Statutes at Large, Ch. 58, at p. 570-572).

³⁰ “An Act Respecting Alien Enemies,” Fifth Congress, Session II (1798), Library of Congress, U.S. Statutes at Large, Ch. 66, at p. 577-578.

³¹ The Sedition Act, July 14, 1798; Fifth Congress; Enrolled Acts and Resolutions; General Records of the United States Government; Record Group 11; National Archives, Washington D.C. (*see also* United States Statutes at Large, Ch. 74, at p. 596-597).

of the good people of the United States, or to stir up sedition ... shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years...

Response to the Alien and Sedition Acts

Thomas Jefferson, a Republican with many friends in France, was outraged by the Acts. He deemed them “something worthy of the eighth or ninth century,”³² since they were contrary to the protections given by the Bill of Rights.³³ Edward Livingston, a prominent U.S Representative from New York, called the Acts “a sacrifice of the first born offspring of freedom.”³⁴

The Sedition Act had greater influence on the American public than the other three, since more people were arrested and convicted under it, and Congress sought to enforce it more than the other provisions.³⁵ In all, approximately 25 people were arrested under the Sedition Act, and 10 people were imprisoned.³⁶ Some of those who were imprisoned included:

- James Thomson Callender, imprisoned for 9 months under the Sedition Act and fined for \$200 for calling President Adams a “repulsive pedant, a gross hypocrite, and an unprincipled oppressor.”³⁷
- Matthew Lyon, imprisoned for four months and fined \$1,000 for calling the Adams administration “ridiculous pomp, foolish adulation, and selfish avarice.”³⁸

³² Peterson, Merrill D., Adams and Jefferson: A Revolutionary Dialogue (University of Georgia Press 1976), at p. 78. ~~See First Amendment protections cited in footnote 2 above.~~

³³ ~~See First Amendment protections cited in footnote 2 above.~~

³⁴ Miller, John C., Crisis in Freedom: The Alien and Sedition Acts (Little, Brown & Co. 1951), at p. 53.

³⁵ ~~See, for example,~~ Cooper, Thomas, An Account of the Trial of Thomas Cooper of Northumberland: on a Charge of Libel against the President of the United States ... (Philadelphia: John Bioren 1800), Rare Book and Special Collections Division, Library of Congress (Mr. Cooper took shorthand of all the proceedings against him, then published this book regarding the indictment and trial for his “intending to defame the President of the United States”).

³⁶ McCullough, David, John Adams (Simon & Schuster 2001), at p. 505.

³⁷ Ibid. at 537; *see also* Levin, Phyllis L., Abigail Adams (St. Martin's Press 1987) at p. 352.

- Benjamin Franklin Bache, Benjamin Franklin's grandson, arrested for calling the President "the blind, bald, crippled, toothless, querulous Adams," although he died before trial.³⁹
- Anthony Haswell, imprisoned for two months and fined \$200 for printing Bache's statements in the *Aurora* newspaper.⁴⁰
- Luther Baldwin, fined \$150 under the Sedition law for suggesting that a cannon should be fired at President Adams' posterior.⁴¹
- David Brown, fined \$480 and sentenced to 18 months in prison for speaking and writing negatively about the Act.⁴²

Many people were openly hostile to enforcement of the Alien and Sedition Acts,⁴³ and believed the federal government was "an enemy infinitely more to be guarded against than the French Directory."⁴⁴ Jefferson and James Madison were the primary leaders of the Republican Party at the time, and they strongly opposed the Alien and Sedition Acts. Jefferson created the *National Gazette*,⁴⁵ which was to circulate throughout the country as

³⁸ See Lyon, Matthew, petition to the U.S. House and Senate, November 10, 1819. Guide to the Records of the U.S. Senate, National Archives (Record Group 46), Washington D.C. (Mr. Lyon complained to Congress about the "virulent attack upon the character of your petitioner ... [for the] high crime of opposing the Executive." See also Wood, John, The Suppressed History of the Administration of John Adams (Walker & Gillis 1846), at pp. 164-166.

³⁹ McCullough, David, John Adams (Simon & Schuster 2001), at p. 500.

⁴⁰ Smith, James M., Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties (Cornell University Press 1956), at p. 370.

⁴¹ Ibid. at 270.

⁴² Ibid. at 259, 267.

⁴³ Letter from John Dawson to his Constituents, Philadelphia, July 19, 1798. Printed broadside. Rare Book and Special Collections Division, Library of Congress ("This law, in my opinion, is an open violation of that amendment, now a part of this constitution, which declares that Congress shall make no law ... abridging the freedom of speech, or of the press ..., and to petition the government"). See also Ogilvie, James, "A speech delivered in Essex County on the subject of the Alien and Sedition Acts," (Jones & Dixon, 1798). No. 13, at p. 3, Rare Book and Special Collections Division, Library of Congress ("repeal ... the Alien and Sedition acts, on account of their manifest unconstitutionality ... and injustice").

⁴⁴ Miller, John C., Crisis in Freedom: The Alien and Sedition Acts (Little, Brown & Co. 1951), at p. 141 (citing Albert J. Beveridge, The Life of John Marshall, II (Boston 1916), at p. 395).

⁴⁵ Patterson, D. Merrill, Adams and Jefferson: A Revolutionary Dialogue (University of Georgia Press 1976), at p. 79.

the “Whig vehicle of intelligence.”⁴⁶ In opposition to the Alien and Sedition Acts, Jefferson and Madison secretly drafted the Kentucky and Virginia Resolutions, respectively.⁴⁷ The Kentucky legislature adopted the resolution in November 1798, which would make the Alien and Sedition Acts unauthorized and void in Kentucky.⁴⁸ In December 1798, Madison’s version was adopted by the Virginia legislature. While the Virginia resolution was milder than the Kentucky resolution, it still opposed the Acts.⁴⁹ Madison hoped this law would encourage other states to object to the Acts and override the action taken by Congress. In February 1799, the two states argued that they could enforce these resolutions by formal nullification of the objectionable laws.⁵⁰

In 1800, Jefferson was elected President and he repealed the Naturalization Act immediately after taking office. The Sedition Act and the Alien Act were allowed to expire in 1800 and 1801, respectively.⁵¹ The Alien Enemies Act is the only one of the four that remains to this day.⁵² Partly as a result of the furor over the Alien and Sedition

⁴⁶ *Ibid.* The “Whig party” originated in England, and was generally opposed to strong central power of the government. See Ormsby, R. McKinley, A History of the Whig Party (Crosby, Nichols & Co. 1859), at p. 14 (“the title of Whig came to represent one who was in favor of popular rights as opposed to all regal government...”); Holt, Michael F., The Rise and Fall of the American Whig Party (Oxford University Press 1999) (“the British ‘real Whig’ oppositionist tradition [required] officeholders ... [to] protect citizens’ political freedom and legal equality from any concentration of public or private power...”), at p. 3.

⁴⁷ Jefferson, Thomas, Draft of Kentucky Resolutions, November 16, 1798. Manuscript, Thomas Jefferson Papers, Manuscript Division, Library of Congress, Washington D.C. See also, McCullough, David, John Adams (Simon & Schuster 2001), at 521.

⁴⁸ The Virginia and Kentucky Resolutions of 1798 and ‘99 (Jonathan Elliot 1832), at p. 16.

⁴⁹ *Ibid.*, at p. 6. The minority in the Virginia Legislature felt compelled though, to draft its own resolution in support of the Alien and Sedition Acts. See The Address of the minority in the Virginia Legislature, (T. Nicholson 1799), Pamphlet, Rare Book and Special Collections Division, Library of Congress, Washington D.C.

⁵⁰ *Ibid.*, at p. 20.

⁵¹ Ferling, John, Adams vs. Jefferson: The Tumultuous Election of 1800 (Oxford University Press 2004), at p. 198.

⁵² See United States Code, Title 50, Ch. 21; U.S. House of Representatives, Office of the Law Revision Counsel (“Whenever there is a declared war between the United States and any foreign nation or government ... all ... citizens ... or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies”).

Acts, the Federalist Party was discredited, and never again became an important factor in national politics.⁵³

Relevance Throughout History: 1798 – Present

“Those who cannot remember the past are condemned to repeat it.”
-George Santayana⁵⁴

If we pay attention, history gives us an opportunity to learn from our mistakes. Many problems have persisted, and we should be able to see how prior generations tried to solve them, rather than simply express regret and move on. The adoption of the Alien and Sedition Acts clearly shows what can happen when the responsibilities of the government to provide security are taken too far at the expense of the individual rights guaranteed under the Declaration of Independence and the Bill of Rights to the U.S. Constitution. We as a country have experienced crises before, and while we should resist the impulse to seriously restrict individual liberties, this problem has often recurred.

For example, on May 16, 1918, about one year after the U.S. entered into World War I, Congress passed another Sedition Act, much like the one from 1798.⁵⁵ This act outlawed the use of “disloyal, profane, scurrilous, or abusive language” about the United States government, its flag, and the armed forces or war efforts.⁵⁶ Similarly to the Alien and Sedition Acts of 1798, the Sedition Act of 1918 was aimed at people who were speaking, writing or publishing things that the government thought could be harmful.

⁵³ Miller, John C., Crisis in Freedom, the Alien and Sedition Acts, (Little Brown & Co. 1951), at p. 3. Adams later wrote that Jefferson was “as responsible for it as I am,” referring to the Alien Act. See Cappon, Lester J., ed., The Adams-Jefferson Letters: The Complete Correspondence between Thomas Jefferson and Abigail and John Adams (University of North Carolina Press 1959), at p. 329.

⁵⁴ The Santayana Edition, The Critical Edition of the Works of George Santayana, cited at <http://iat.iupui.edu/santayana/content/santayana-quotations> (Indiana University School of Liberal Arts).

⁵⁵ Smith, James M., Freedom’s Fetters: The Alien and Sedition Laws and American Civil Liberties (Cornell University Press 1956), at p. 432

⁵⁶ Espionage Act of 1917, Amendment to Section 3, United States Statutes at Large, Washington, D.C., 1918, Vol. XL, at p. 553-554.

Those who were found guilty could be punished by a fine not exceeding \$10,000 or imprisoned for no longer than twenty years, or both.⁵⁷ The 1918 act was repealed in 1921.

On February 19, 1942, President Roosevelt signed Executive Order 9066.⁵⁸ This order relocated many Japanese Americans, many of whom were citizens of this country and not aliens at all, from their homes to internment camps. While this order did not deport them, like the Alien Act did, it still forced thousands of innocent people from homes and altered their lives, based simply on ethnicity, just as the Federalists had targeted the Irish and French in 1798.

In the 1950s, with the onset of the Cold War, fear of Soviet spies swept the country, and concerns about the Soviet Union exploding its first atomic bomb had the people in a panic.⁵⁹ Joseph McCarthy, a Republican Senator from Wisconsin,⁶⁰ began investigations and spoke at the Republican National Convention in 1952 about rooting out communists from their places in American society.⁶¹ McCarthy led vigorous investigations against supposed Communist sympathizers, which became known as

⁵⁷ Ibid.

⁵⁸ Executive Order 9066, February 19, 1942; General Records of the United States Government; Record Group 11; National Archives, Washington D.C. (stating that certain military areas could be created "from which any or all persons may be excluded").

⁵⁹ Hillstrom, Kevin, Defining Moments: McCarthyism and the Communist Threat (Omnigraphics Inc. 2011).

⁶⁰ The Republican Party in the 1950s was a different political party than the Republican Party in the 1800s under Jefferson and Madison. The Republican Party was founded in the 1790s (also called the "Democratic-Republican Party") and evolved to become the Democratic Party. See Madison, James, "A Candid State of Parties," National Gazette (Philadelphia), September 26, 1792, Serial and Government Publications Division, Library of Congress ("The Republican party, as it may be called..."). The modern Republican Party was created in the 1850s, primarily in opposition to slavery. Gould, Lewis L., Grand Old Party: A History of the Republicans (Oxford University Press 2003), at p. 4 ("the chain of events that led to the rise of the Republicans and the Lincoln presidency was fueled by the crisis over human slavery").

⁶¹ Ibid. at p. 56-67.

“McCarthyism.”⁶² Throughout the investigations, many of the rights promised by the Constitution, such as freedom of speech or the freedom of the press, were trampled.⁶³

On October 26, 2001, following the 9/11 attack on the World Trade Center in New York, President Bush signed into law the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism” Act (the U.S.A. P.A.T.R.I.O.T. Act).⁶⁴ The goal of the Patriot Act was to “deter and punish terrorist acts in the United States and around the world,”⁶⁵ to give federal officers greater authority to track and intercept communications, and to give the U.S. Attorney General wide discretion to detain aliens.⁶⁶ Many people believe that it goes too far and compromises our civil liberties by giving the government too much power,⁶⁷ while others argue it does not sufficiently protect Americans from terrorists.⁶⁸ Either way, the Patriot

⁶² Klehr, Harvey & Radosh, Ronald, The Amerasia Spy Case, Prelude to McCarthyism (University of North Carolina Press 1996) at p. 219 (“McCarthyism” came to be known as a tactic to smear opponents).

⁶³ See Klehr, The Amerasia Spy Case, at 193, and Hillstrom, Defining Moments, at p. 66-69, for examples of people who were accused of being communist, and books that were banned because of a claimed connection with communism, which affected peoples’ lives in very real ways.

⁶⁴ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001, Public Law 107-56 (October 26, 2001), United States Government Printing Office. According to a federal district judge, the Patriot Act was passed quickly by Congress as a reaction to 9/11, and many people in the government have not read the Act in its entirety, even now. Judge Lee Yeakel, U.S. District Judge for the Western District of Texas, Austin Division. In-person interview by author in Austin, Texas, on February 20, 2014.

⁶⁵ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001, Public Law 107-56 (October 26, 2001), United States Government Printing Office. at introduction.

⁶⁶ Ibid., at section 412 (“such custody shall be maintained irrespective of any relief from removal for which the alien may be eligible, or any relief from removal granted the alien, until the Attorney General determines ...”).

⁶⁷ Maikov, Anya, Legislative Assistant to Congressman Lloyd Doggett, D-Texas, 201 Cannon Building, Washington D.C. In-person interview by author in Washington D.C., on March 4, 2014 (“The balance between security and liberty has been lost”).

⁶⁸ According to federal district judge Lee Yeakel, some of the broader protections of the Patriot Act are necessary because “war is different than crime. We are in an asymmetric war, as many of the groups trying to harm us have been disowned by their own government.” In-person interview by author in Austin, Texas, on February 20, 2014.

Act shows once again the ongoing tension in balancing individual rights against responsibilities to maintain security and defense.⁶⁹

Conclusion

The Alien and Sedition Acts provided the first test of a young United States government in balancing an individual's rights against the government's responsibilities to provide for the common defense. The Acts, like the recent Patriot Act, were passed "in a period of real and perceived threats to the homeland."⁷⁰ History ultimately determined that the Federalist Party went too far, and that the nature of the threat was no reason to ignore the Bill of Rights.

This is the lesson the Alien and Sedition Acts provide: security can be taken too far in the face of fear. Rather than take hasty actions that will have harmful long-lasting effects,⁷¹ we should weigh the consequences first, and then determine what measured response, if any, is needed. Then, we can learn from history, and not repeat the same mistakes that can permanently affect our constitutionally guaranteed "unalienable rights."

⁶⁹ Judge Yeakel makes the point that "the Alien and Sedition Act may have been more like the Patriot Act if we had the technology back then." Judge Lee Yeakel, U.S. District Judge for the Western District of Texas, Austin Division. In-person interview by author in Austin, Texas, on February 20, 2014.

⁷⁰ McClellan, Scott, former White House Press Secretary for President George W. Bush. In-person interview by author in Austin, Texas, on March 20, 2014.

⁷¹ "Authoritarianism is not born full-bodied, it is conceived in small injustices, which tolerated over time, become irreversible." Floor speech by Rep. Lloyd Doggett (D-Tex.), U.S. House of Representatives, Washington D.C., December 15, 2005 (obtained from Rep. Doggett's office on March 20, 2014).

Annotated Bibliography

Primary Sources

Adams, Abigail. Letter from Abigail Adams to William Shaw, December 23, 1798. Manuscript, Shaw Family Papers, Manuscript Division, Library of Congress, Washington D.C.

This letter from Abigail Adams to her nephew, located now at the Library of Congress, was interesting, because it showed how much she believed in her husband, and how she thought his speech to the public helped quiet fears about the French at the time.

Aurora General Advertiser, July 29, 1795, No. 1421, Serial and Government Publication Division, Library of Congress, Washington D.C.

This newspaper was run by Benjamin Franklin Bache, who was later prosecuted under the Alien and Sedition Acts. The newspaper printed a leaked version of the Jay Treaty, which upset many people in the government. It was amazing to see the original newspaper in the Library of Congress, since it was published by someone who was later a target of the Alien and Sedition laws.

Bill of Rights to the U.S. Constitution, National Archives, Washington D.C.

It was inspiring to see the original Bill of Rights in Washington. Since the Bill of Rights give us certain liberties or freedoms that we take for granted, I thought it was important to see them, since the Alien and Sedition Acts obviously affected those freedoms.

Butler, Pierce. Letter from Pierce Butler to James Madison, June 26, 1795. Manuscript, James Madison Papers, Manuscript Division, Library of Congress, Washington D.C.

This letter from Pierce Butler to James Madison notified Madison that the Jay Treaty passed the Senate on June 24, 1795. I thought it was interesting that Butler thought that the treaty might cause problems in the United States, since he said that he hoped it would not "sow the seeds of future discord."

Cappon, Lester J., ed., The Adams-Jefferson Letters: The Complete Correspondence between Thomas Jefferson and Abigail and John Adams (University of North Carolina Press 1959).

This source was interesting because it showed how John Adams and Thomas Jefferson wrote to each other regarding the Alien and Sedition Acts, and how they criticized each other on the issue.

Claypoole's American Daily Advertiser, September 19, 1796, No. 5444, at col. 4, Serial and Government Publications Division, Library of Congress, Washington D.C.

This original newspaper from 1796 published George Washington's "Farewell Address," in which he discusses his hopes for the country, and warns against the effects of political parties. It was great to see it in the context of a newspaper, with other stories and advertisements.

Constitution, U.S. Government, National Archives, Washington D.C.

The Constitution is the foundation for our entire system. The Alien and Sedition Acts have to be viewed in the context of the duties of the government under the Constitution. I wanted to see the original Constitution, since one of the government's duties is to provide for the common defense, which was one of the reasons why the Alien and Sedition Acts were enacted in the first place. It was amazing getting to stand and read from the original.

Cooper, Thomas, An Account of the Trial of Thomas Cooper of Northumberland: on a Charge of Libel against the President of the United States ... (Philadelphia: John Bioren 1800), Rare Book and Special Collections Division, Library of Congress, Washington D.C.

This was a really interesting book that was published by Mr. Cooper after he was accused of intending to defame President Adams. Mr. Cooper took shorthand notes of all the proceedings, then published this book about what happened. It was great getting to see an original source that discussed opposition to the Alien and Sedition Acts.

Dawson, John, Letter to his Constituents, Philadelphia, July 19, 1798. Printed broadside. Rare Book and Special Collections Division, Library of Congress, Washington D.C.

This original letter discussed how Mr. Dawson thought the Alien and Sedition Acts were unconstitutional, and showed the opposition to them at the time.

Declaration of Independence (July 4, 1776), National Archives, Washington D.C.

The Declaration of Independence discusses our rights to life, liberty and happiness, which seemed like a good starting point for my paper about the effect that the Alien and Sedition Acts could have on those rights.

Executive Order 9066, February 19, 1942, General Records of the United States Government, Record Group 11, National Archives, Washington D.C.

I reviewed the Executive Order signed by President Franklin Roosevelt that stated that military areas could be created in which "any or all persons may be

excluded,” which resulted in sending Japanese-Americans to internment camps in World War II. I wanted to compare it with the Alien and Sedition Acts of 1798.

Hassan et al. v. The City of New York, Case No. 2:12-cv-03401 (D. N.J. Feb. 20, 2014)

This was a recent federal court case in which the district court in New Jersey ruled that a general surveillance program of the Muslim community was acceptable, since the purpose of the surveillance was not entirely discriminatory. This case was useful to show how relevant the issues from the Alien and Sedition Acts of 1798 are even today, and how difficult it is to balance the rights of individuals against the responsibilities of government to protect its citizens.

Jefferson, Thomas, Draft of Kentucky Resolutions, November 16, 1798. Manuscript. Thomas Jefferson Papers, Manuscript Division, Library of Congress, Washington D.C.

This handwritten draft of the Kentucky Resolutions by Thomas Jefferson showed just how much he disliked the Alien and Sedition Acts, and believed that the federal government did not have authority to enact these laws.

Johnston, Henry P., ed., The Correspondence and Public Papers of John Jay, vol. IV (G.P. Putnam’s Sons 1893).

This set of books included all of the letters to and from John Jay. Since the Jay Treaty with England in 1795 helped create the crisis with the French that led to the Alien and Sedition Acts, I thought it was interesting to read what Jay thought about the treaty he negotiated.

Lyon, Matthew, petition to the U.S. House and Senate, November 10, 1819. Guide to the Records of the U.S. Senate, National Archives (Record Group 46), Washington D.C.

This handwritten original letter in the National Archives was amazing. It was a petition by Matthew Lyon, who was convicted under the Sedition Act, and who was asking Congress to restore his good name, even though he was over 70 years old at the time. This showed me just how real the effects of the Alien and Sedition Acts were at the time.

Madison, James, “A Candid State of Parties,” *National Gazette* (Philadelphia), September 26, 1792, Serial and Government Publications Division, Library of Congress, Washington D.C.

This newspaper article written by James Madison, and in the Library of Congress, showed me exactly when the original Republican Party was founded.

Malkov, Anya, Legislative Assistant to Congressman Lloyd Doggett, D-Texas, 201 Cannon Building, Washington D.C. In-person interview by author in Washington D.C., on March 4, 2014.

I interviewed Ms. Malkov regarding Congressman Doggett's official position regarding the Patriot Act. She said that the "balance between security and liberty has been lost." Much like with the Alien and Sedition Acts, she felt that Congress should act to protect freedom more than it has done lately. She also provided me with copies of speeches by Congressman Doggett about his position on these issues.

Marshall, John, "Eulogy for Washington," printed in the *Ulster County Gazette*, January 4, 1800. (Samuel S. Freer and Son) Serial and Government Publications Division, Library of Congress, Washington D.C.

This newspaper printed the eulogy for George Washington and is the only known original. This eulogy had one of the most famous quotes about Washington, "first in war, first in peace, and first in the hearts of his countrymen." I got to see the original at the Library of Congress, which was just incredible.

McClellan, Scott, former White House Press Secretary for President George W. Bush. In-person interview by author in Austin, Texas, on March 20, 2014.

I spoke with Mr. McClellan about his experience working for President Bush, and in particular after September 11, 2001. We discussed the problems with security issues, and how they impacted civil liberties. It was very interesting to talk with someone who had first-hand experience with the "security v. liberties" issue following the terrorist attacks on the United States.

Ogilvie, James, "A speech delivered in Essex County on the subject of the Alien and Sedition Acts," (Jones & Dixon, 1798), No. 13, Rare Book and Special Collections Division, Library of Congress, Washington D.C.

This original speech was bound into a small book, and referred to how the Alien and Sedition Acts were unconstitutional, and would hurt the interests of the United States in the long term. It was interesting to see the extent of the opposition to the Acts at that time.

Virginia Legislature, Address of the minority in the Virginia Legislature, (T. Nicholson 1799), Pamphlet, Rare Book and Special Collections Division, Library of Congress, Washington D.C.

I thought this short publication was interesting, since it showed that not everyone was opposed to the Alien and Sedition Acts. The minority in the Virginia Legislature wanted it known that it supported the Acts.

United States Code, Title 50, Ch. 21; U.S. House of Representatives, Office of the Law Revision Counsel, Washington D.C.

This statute shows how parts of the Alien Enemies Act from 1798 have been continued into present law. If war has been declared, the government still has the power to arrest and remove anyone who is 14 years old or older and a citizen of the hostile country. I thought this was interesting that some sections from the Alien and Sedition Acts can still be used today.

United States Statutes at Large, Washington, D.C., 1918, Vol. XL
[http://wwi.lib.byu.edu/index.php/The U.S. Sedition Act](http://wwi.lib.byu.edu/index.php/The_U.S._Sedition_Act)).

This source also showed the Sedition Act of 1918, so that I could compare with the Alien and Sedition Acts of 1798.

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001, Public Law 107-56 (October 26, 2001), United States Government Printing Office, Washington D.C.
<http://www.gpo.gov/fdsys/pkg/PLAW-107publ56/pdf/PLAW-107publ56.pdf>

This showed the text of the Patriot Act, which was really long, and which had a lot of detail about what the government could do in response to terrorism, including taking action against aliens.

The USA PATRIOT act, *what is the U.S.A P.A.T.R.I.O.T act?*
<http://www.justice.gov/archive/ll/highlights.htm>

This source showed me the actual USA PATRIOT Act of 2001, what the PATRIOT Act was about, and if it was similar to the Alien and Sedition Acts.

The Virginia and Kentucky Resolutions of 1798 and '99 (Jonathan Elliot 1832).

This source gave me so much information on the Kentucky and Virginia Resolutions. It is where I got most of my background research done for the resolutions.

Washington, George. September 17, 1796, Farewell Address, George Washington Papers at the Library of Congress, 1741-1799, Letterbook 24; Library of Congress, Washington D.C.

George Washington's Farewell Address is a long, handwritten document that discusses many issues, such as his hopes for the country as he left the presidency. One of the things he warns about is letting political parties get in the way of what was right for the country. This was a useful lesson, but which was ignored by the Federalist Party in its fight against the Republican Party.

Washington, George. Letter from George Washington to Alexander Hamilton, August 26, 1792. Manuscript. George Washington Papers, Manuscript Division, Library of Congress, Washington D.C.

In this letter, Washington discussed how political differences were unavoidable and perhaps necessary, but how the effects of political disagreements were harmful to the country. I thought it was interesting, since the Alien and Sedition Acts were passed so soon after Washington left the presidency.

Yeakel, Lee, U.S. District Judge for the Western District of Texas, Austin Division. In-person interview by author in Austin, Texas, on February 20, 2014.

I interviewed Judge Yeakel regarding his experience handling cases involving aliens, surveillance, and other federal issues. We discussed the similarities and differences between the Alien and Sedition Acts of 1798 with the USA Patriot Act of 2001. Judge Yeakel was very helpful in understanding the types of cases that he hears, how the judicial branch handles terrorist and alien cases, and how the judicial branch tries to balance the rights of the individual with the responsibilities of the government to provide for security and for the common defense.

Secondary Sources

Allen, Gardner W., Our Naval War with France, (Houghton Mifflin 1909).

This book contained a lot of material regarding the preparations for war with France in the 1790s, and correspondence between government officials and the navy about the preparation and actions taken.

Avalon Project at the Yale Law Library, *the Alien and Sedition Acts*,
http://avalon.law.yale.edu/subject_menus/alsedact.asp

This was one of the first sources I found that had the full text for the Alien and Sedition Acts. This obviously gave me much more detail on what the Acts covered.

Brown, Walt, John Adams and the American Press: Politics and Journalism at the Birth of the Republic (McFarland & Co. 1995).

This source showed me how Adams and Jefferson dealt with the press. Many journalists or newspapers were extremely biased towards the President or Jefferson. A lot of the arrests from the Sedition Acts were because of people printing stories in the newspaper.

Carey, George W., ed., The Political Writings of John Adams (Regnery Publishing, Inc. 2000).

This book discussed John Adams' thoughts, in his own words and writings. It allowed me to read about his ideas and feelings on his presidency and the Alien and Sedition Acts.

Ferling, John, Adams vs. Jefferson: The Tumultuous Election of 1800 (Oxford University Press 2004).

This source showed me the difficulties between Thomas Jefferson and President Adams, how they approached the Acts, and how hard the Federalists fell, politically, after the election of 1800.

Gould, Lewis L., Grand Old Party: A History of the Republicans (Oxford University Press 2003).

At the time of the Alien and Sedition Acts, the two primary political parties were the Federal Party and the Republican Party (also known as the "Democratic Republicans"). To prevent any confusion, I wanted to point out that the modern Republican Party began in the 1850s, and that the original "Republican Party" eventually became today's Democratic Party.

Hillstrom, Kevin, Defining Moments: McCarthyism and the Communist Threat (Omnigraphics Inc. 2011).

This book discussed the rise of Senator Joseph McCarthy, and the tactics he used to gain publicity for himself while accusing others of communism.

History Matters, *Executive Order 9066: The President Authorizes Japanese Relocation*, <http://historymatters.gmu.edu/d/5154/>

This was one of the first sources I went to so that I could find more information about the executive order that President Franklin Roosevelt signed in World War II. Later, I saw the order from the National Archives.

Holt, Michael F., The Rise and Fall of the American Whig Party (Oxford University Press 1999).

This book was about the Whig party in the United States. Thomas Jefferson established the *National Gazette* newspaper as the “Whig vehicle of intelligence,” and I thought it was important to explain what “Whig” meant.

Klehr, Harvey & Radosh, Ronald, The Amerasia Spy Case, Prelude to McCarthyism (University of North Carolina Press 1996).

This book was about a different spying case, which was one of the things that led to the rise of Joseph McCarthy and his targeting of supposed communists.

Levin, Phyllis L., Abigail Adams (St. Martin's Press 1987).

This source showed me just how much President Adams valued his wife's opinion. She also had a very substantial say in what John Adams did with the Alien and Sedition Acts.

Longley, R. Kyle, Ph.D., In-person interview by author, Austin, Texas, November 28, 2013.

Dr. Longley is a history professor at Arizona State University. I spoke with him regarding the general background for the Alien and Sedition Acts, and the important issues relating to the Acts and the historical background for them.

Mays, Terry M., Historical Dictionary of the American Revolution (Scarecrow Press 2010).

This book had some general information regarding the American Revolution, and mentioned the problem with debts owed by the United States to France.

McCullough, David, John Adams (Simon & Schuster 2001).

This source gave me a deeper look into John Adams life. It showed me his reasoning behind the Alien and Sedition Acts, as well as also giving me more information on the Acts and what happened with them.

Miller, John C., Crisis in Freedom: The Alien and Sedition Acts (Little, Brown & Co. 1951).

This source was my most used source and it taught me so much. I learned everything from the beginning of the Quasi-War to the very end of the Alien and Sedition Acts. This book was packed cover to cover with useful information.

Ormsby, R. McKinley, A History of the Whig Party (Crosby, Nichols & Co. 1859).

This book discussed the origins and history of the Whig party in England and in the United States. I used this resource (along with the book by Michael Holt) to explain what "Whig" meant, since Thomas Jefferson referred to the *National Gazette* newspaper as the "Whig vehicle of intelligence."

Peterson, Merrill D., Adams and Jefferson: A Revolutionary Dialogue (University of Georgia Press 1976).

This source showed me the basics to start my project on, which I then was able to elaborate on. It mainly showed me what happened before the Acts and the press that was involved.

The Santayana Edition, The Critical Edition of the Works of George Santayana, cited at <http://iat.iupui.edu/santayana/content/santayana-quotations> (Indiana University School of Liberal Arts).

This source had a good quotation by George Santayana about the value of history.

Schneier, Bruce. "It's Time to Break up the NSA," CNN.com, February 20, 2014.

This article discussed how powerful U.S. agencies such as the National Security Agency (NSA) have become, and that dividing the NSA into three separate agencies, each with a different function, would be better for the civil liberties of U.S. citizens. I thought it showed how the issues from the Alien and Sedition Acts were still relevant today.

Smith, James M., Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties (Cornell University Press 1956).

This source was my second most used source. It, like *Crisis in Freedom*, gave me extremely useful information that I used to build the outline of my paper.

Supreme Court History, *the Sedition Act of 1918*,
http://www.pbs.org/wnet/supremecourt/capitalism/sources_document1.html

This source showed me the Sedition Act of 1918. This let me compare the Sedition Act of 1918 to the Sedition Act of 1798, and see the similarities and differences.

Wood, John, The Suppressed History of the Administration of John Adams (Walker & Gillis 1846).

This source showed me a very biased, one-sided opinion on John Adams and the Alien and Sedition Acts. But it also gave me any idea of what the Acts were and just how many people despised John Adams for adopting the Acts.