

The Sedition Act of 1798 as a Federalist Legal Instrument **Jack Granahan¹**

The Sedition Act of 1798, enacted alongside the other Federalist-proposed Alien and Sedition Acts, stands as the most egregious violation of the First Amendment's Free Speech and Free Press Clauses in American history. This law, passed by a predominantly Federalist Congress and signed into law by President John Adams, criminalized the uttering and publishing of criticism of the federal government.² This paper aims to demonstrate that the Sedition Act constituted more than just a national security measure that the Federalists supported on the grounds of empowering a strong, central government. Rather, as shown by the motives of the law described by Federalist politicians and the biased trial proceedings of those charged under the law, the Sedition Act was a calculated act of legal instrumentalism that sought to empower the Federalists by punishing anti-Federalist dissenters.

I. Introduction

The American political climate of the late 1790s was defined by ideological conflict: Federalists supported a centralized federal government, while Democratic-Republicans supported a decentralized, agrarian vision.³ In 1797, Federalist John Adams was inaugurated as president, allowing the Federalists to aggressively pursue their agenda.⁴ This included pushing for a war with France in the wake of the XYZ Affair, which saw the French government extort bribes from American diplomats as a prerequisite for negotiation. The fiercely anti-authoritarian Democratic-Republicans, who largely sympathized with the French republican government, opposed

¹ Brandeis University, Class of 2026.

² An Act for the Punishment of Certain Crimes Against the United States, ch. 9, 1 Stat. 112 (1790).

³ Gérard Hugues, *Norms for a Misuse of Authority: the Alien and Sedition Acts*, 74 Rev. Fr. d'Études Am. 93, 95 (1997).

⁴ Douglas Bradburn, *A Clamor in the Public Mind: Opposition to the Alien and Sedition Acts*, 65 Wm. & Mary Q. 565 (2008).



this war. As a consequence of this anti-war sentiment and other criticisms of the Adams administration, Adams and the Federalist majority in both houses of Congress sought to reduce anti-Federalist political activity through legislative means.⁵

In the summer of 1798, this effort came to fruition with the implementation of the Alien and Sedition Acts. In addition to three acts that regulated immigration and citizenship law, this collection of legislation concluded with the Sedition Act. Among other provisions, this statute made “writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States” a crime punishable by a fine of up to \$2,000 (equivalent to over \$51,000 in 2024) and up to two years in prison.⁶ This paper argues that the Sedition Act was based on an instrumentalist interpretation of the First Amendment meant to empower the Federalists by suppressing political dissent by the Democratic-Republicans.

Legal instrumentalism refers to the commandeering of specific interpretations and applications of legal texts as “instrument[s] of social change.”⁷ The Alien and Sedition Acts conform to this practice. The first three parts of the act, which pertain to immigration and naturalization, constitute a clear effort to combat the “French peril” alleged by many Federalists following the XYZ Affair.⁸ Meanwhile, the Sedition Act was designed to crack down on Democratic-Republican opposition to, among other policies, the Federalists’ march towards a war with France. The Sedition Act and its accompanying interpretation of the First Amendment was used by the Federalists as a legal instrument against the Democratic-Republicans. This use of legal instrumentalism can

⁵ *Id.* at 565-566.

⁶ An Act, *supra* note 2.

⁷ Steven Quevedo, *Formalist and Instrumentalist Legal Reasoning and Legal Theory*, 73 *Ca. Law Rev.* 119, 125 (1985).

⁸ Hugues, *supra* note 3 at 95-96.



be illustrated through Federalist attempts to justify the subversion of the Constitution, Democratic-Republican explanations of the law's implications, and the individuals who would be prosecuted for sedition.

II. Sedition and Freedom of Speech

Democratic-Republicans slammed the Sedition Act as a blatant violation of the First Amendment to the Constitution, which states that “Congress shall make no law [...] abridging the freedom of speech, or of the press.”⁹ New York Representative Edward Livingston declared that the Sedition Act was “an abridgement of the liberty of the press, which the Constitution has said shall not be abridged,” and that the proper constitutional response to defamatory criticism of the government is “to disprove the fact” rather than “to prosecute the man who makes the charge.”¹⁰ In other words, seditious content must be met with correction instead of prosecution.

It was also evident to the Democratic-Republicans even before passage that the Sedition Act was an explicit attempt by the Federalists to clamp down on Democratic-Republican speech and presses. While the law worked its way through Congress, Vice President Thomas Jefferson, an unabashed Democratic-Republican, stated that “the object of [the Sedition Act] is the suppression of the [Democratic-Republican] presses.”¹¹ North Carolina Representative Nathaniel Macon attacked the bill on the House floor, proclaiming that it would “produce more uneasiness, more irritation, than any act which ever passed the Legislature of the Union.”¹² Several counties in northern Virginia, a Democratic-Republican stronghold known for its frequent public meetings at which citizens freely

⁹ U.S. Const. amend. I.

¹⁰ Wendell Bird, *Criminal Dissent: Prosecutions Under the Alien and Sedition Acts of 1798* (2020).

¹¹ *Id.* at 18.

¹² Walter Berns, *Freedom of the Press and the Alien and Sedition Laws*, 1970 Sup. Ct. Rev. 109, 121 (1970).



criticized the federal government, issued official resolutions condemning the Sedition Act. Some of these resolutions “mimicked the laudatory petitions of the Federalists and sent their complaints directly to Adams.”¹³

Federalists took different stances on the applicability of the First Amendment to the Sedition Act. Many Federalist legal scholars asserted that, due to the importance of the journalistic integrity of newspapers in the revolutionary effort for American independence, government officials were entitled to freedom against “slandorous commentary in the press.”¹⁴ Some Federalist judges argued that the Constitution did not apply to wartime legislation and that English common law could be used as a precedent for American law without the First Amendment. This led some to turn towards the lengthy history of English common law statutes prohibiting “seditious libels” and “any dangerous or offensive writings” to preserve, in the words of Sir William Blackstone, “peace and good order, [...] government and religion.”¹⁵

Additionally, a common Federalist argument supporting the law postulated that defaming the government during a period of such fierce hostilities with France was akin to aiding the enemy during wartime.¹⁶ Meanwhile, Connecticut Representative Samuel Dana focused primarily on the defamatory nature of seditious speech, arguing that “the liberty of uttering malicious falsehood” does not exist in the Constitution.¹⁷

These arguments may initially suggest that the impetus for the passage of the Sedition Act was grounded in sensible governance. However, even some arguments posed by supporters of the law challenge this interpretation, as they

¹³ Bradburn, *supra* note 4 at 569.

¹⁴ Hugues, *supra* note 3 at 94.

¹⁵ Bird, *supra* note 10 at 42.

¹⁶ Ralph Frasca, “*Treasonable Expressions*”: James Bell and the Emerging Legal Right to Criticize, 86 Pa. Hist. 67, 73 (2019).

¹⁷ Bird, *supra* note 10 at 46.



demonstrate that the law was an attempt to suppress Democratic-Republican newspapers. Connecticut Representative John Allen gave the first speech in favor of the Sedition Act while it was still in Congress. He referred to the Democratic-Republicans as “the Jacobins of our country” who sought to use “all the presses in the nation” as a means of overthrowing the federal government, urging the Federalists to “wrest it away from them.”¹⁸ Numerous Federalist supporters of the law also referenced President George Washington’s 1793 statement that partisan newspapers (particularly those associated with Democratic-Republicans) were “stuffing their papers with scurrility and malignant declamation.”¹⁹

The *Gazette of the United States*, a prominent Federalist newspaper, regularly characterized Democratic-Republican newspapers as “nest[s] of traitors” and “set[s] of revolvers to France,” calling for those running these newspapers to be prosecuted to the fullest extent of the law.²⁰ These Federalist condemnations of Democratic-Republican newspapers are indicative of the Sedition Act’s purpose as a vehicle for the suppression of the Democratic-Republican press.

III. Common Law Sedition Prosecutions

Even more damning against the Federalists, however, was the political affiliation of the individuals who were charged and prosecuted under the Sedition Act. The accused were all associated with Democratic-Republican publications or were prominent political dissidents who opposed the Adams administration.²¹ Before the passage of the Sedition Act, several Democratic-Republican dissidents had been charged with seditious libel under the common law. This followed the aforementioned trend of Federalist judges adhering to Blackstone’s common law rather than the Constitution during

¹⁸ *Id.* at 45.

¹⁹ *Id.* at 18.

²⁰ *Id.* at 33.

²¹ Bird, *supra* note 10 at 385.



times of war. The most notable of these common law sedition prosecutions was that of Benjamin Franklin Bache, the grandson of the eponymous founding father, as well as the founder and editor-in-chief of the Philadelphia-based *Aurora General Advertiser*.²²

After its establishment, the *Aurora* quickly became a prominent dissident newspaper. Vice President Jefferson had previously stated that Bache's newspaper had the potential to become the primary "[Democratic-]Republican vehicle of news established between the seat of government and all it's [sic] parts."²³ A relentless advocate of a free press, Bache criticized attempts by the Federalist-dominated Congress to "muzzle the press" by restricting reports of a physical attack on Vermont representative Matthew Lyon, a Democratic-Republican, by Connecticut representative Roger Griswold, a Federalist.²⁴ This advocacy on Lyon's behalf made Bache a key target of the Federalist crackdown on Democratic-Republican speech.

One source of Bache's contempt for President Adams came from his continued support of the Jay Treaty, signed in 1795 by President Washington, which strengthened ties between the U.S. and monarchist Great Britain at the expense of relations with republican France. Bache slammed President Adams in the *Aurora* for his support of the treaty, rhetorically asking: "How has [Adams] protected liberty? By writing in favor of monarchy and encouraging the suppression of the right of free opinion. How has he patronized religion? By promoting war."²⁵ After the *Aurora* repudiated Adams, Bache was charged at the behest of Secretary of State Timothy Pickering, a devout Federalist, with "libeling the President and the Executive Government, in a manner tending to excite sedition and opposition to the laws, by sundry publication and

²² Frasca, *supra* note 16 at 68.

²³ Bird, *supra* note 10 at 58.

²⁴ *Id.* at 71.

²⁵ Frasca, *supra* note 16 at 68.



re-publication.”²⁶ Mere days before his case was set to go to trial, Bache fell victim to Philadelphia’s yellow fever epidemic; he died prematurely, denying Federalist judge John Sloss Hobart the ability to try him for speaking out against the Federalist government.²⁷

IV. The Lyon Trial

The first individual to be criminally charged under the Sedition Act was Congressman Lyon of Vermont in the summer of 1798.²⁸ Lyon, an Irish-born immigrant, had previously faced fierce xenophobia from Federalists in Congress on account of his ethnic background, culminating in the cane attack on Lyon by Congressman Griswold.²⁹ Lyon was also the editor-in-chief of *The Scourge of Aristocracy*, a newspaper intended to promote “the [Democratic-]Republican interest.”³⁰ This put a target on Lyon’s back, and in July of 1798, the Federalists found their excuse to charge Lyon with seditious libel.

During this time, *Spooner’s Vermont Journal* published a letter written by Lyon that lambasted President Adams for maladministration. This letter was written and sent to the press two weeks before the passage of the Sedition Act, so charging Lyon with seditious libel would arguably violate the constitutional prohibition of *ex post facto* criminal charges (that is, a criminal charge levied against a defendant for actions committed prior to the criminalization of said act).³¹ Nevertheless, Lyon was indicted under the Sedition Act in October of 1798. The indictment accused Lyon of attempting to “stir up sedition, and to bring the president and government of the United States into contempt,” citing Lyon’s statement that

²⁶ Bird, *supra* note 10 at 67.

²⁷ Hugues, *supra* note 3 at 97.

²⁸ Bradburn, *supra* note 4 at 580.

²⁹ *Id.* at 580.

³⁰ Bird, *supra* note 10 at 89.

³¹ *Id.* at 91.



condemned the President's "continual grasp for power, [...] unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice."³²

Lyon's trial exemplified a kangaroo court. Federalist-influenced Supreme Court associate justice William Paterson presided over the trial, and his conduct was fraught with judicial irregularities. Paterson personally disqualified jurors whom he believed viewed the Sedition Act as an unconstitutional statute, and even instructed the jury to convict Lyon on the grounds that the defendant had admitted to writing the supposedly seditious letter.³³ Paterson's instructions to the jury required them to convict Lyon if it was determined that Lyon's letter portrayed President Adams "odious or contemptible," prohibiting the jury from assessing the validity of Lyon's criticisms.³⁴ Most glaringly, Paterson specifically invalidated Lyon's defense that the law he was being charged under violated the First Amendment. According to Paterson, the constitutionality of the Sedition Act had already been settled by Congress, and "the guilt consists in the publication" and the publication exclusively.³⁵ Therefore, it was no surprise when Lyon was found guilty of seditious libel. He was ordered to pay a fine and legal costs totaling \$1,060.96 (equivalent to over \$27,000 in 2024) and sentenced to four months in prison, with this incarceration to continue until the fine and legal fees were paid.³⁶

In November of 1798, Lyon ran for reelection and became the first and only individual to win a congressional election while imprisoned.³⁷ Lyon was accordingly designated by a Democratic-Republican newspaper from Connecticut as "the first martyr to the cause of liberty, under this law [the

³² Lyon's Case, 15 F. Cas. 1183, (C.C.D. Vt. 1798).

³³ Hugues, *supra* note 3 at 98.

³⁴ Lyon's Case, *supra* note 32.

³⁵ Bird, *supra* note 10 at 94.

³⁶ *Id.* at 95.

³⁷ Bradburn, *supra* note 4 at 580.



Sedition Act].”³⁸ Lyon’s reelection was hailed as a victory for the Democratic-Republican Party, but it was perhaps even more important as a demonstration of backlash against the draconian Sedition Act and the dubiously impartial prosecution of Lyon. From the blatant hatred faced by Lyon for his Irish heritage (coupled with endemic anti-French xenophobia), to the *ex post facto* indictment of Lyon, to Justice Paterson’s politically biased charge of the jury without consideration for Lyon’s argument of constitutionality, the congressman’s show trial was indicative of the Sedition Act’s role as an instrument designed to infringe upon the freedoms of speech and the press held by Democratic-Republicans.

V. The Final Wave of Sedition Prosecutions

Following a lengthy hiatus in enforcing the Sedition Act, a new wave of prosecutions took place between 1799 and 1800, this time focusing almost exclusively on Democratic-Republican newspaper editors. Due to Congressman Lyon’s continued Democratic-Republican advocacy as editor of *The Scourge of Aristocracy*, he would once again be charged during this campaign of indictments, though the charges against him would never be served, as he left Vermont after his retirement from Congress.³⁹ Another victim of this return of the Sedition Act was Democratic-Republican stalwart Anthony Haswell, the editor-in-chief of the *Vermont Gazette*. Haswell was charged with seditious libel in October of 1799, with his indictment citing his self-published defense of the previously imprisoned Lyon, in which Haswell stated that Lyon was being held “by the oppressive hand of usurped power in a loathsome prison, deprived almost of the right of reason, and suffering all the indignities which can be heaped upon him by a hard-hearted

³⁸ Bird, *supra* note 10 at 97.

³⁹ *Id.* at 284-285.



savage.”⁴⁰ In essence, Haswell described Lyon as a political prisoner of a tyrannical Federalist regime.

In the same publication, Haswell castigated President Adams for supporting the pro-British Jay Treaty, claiming that “the administration publicly notified that Tories, men who had fought against our independence, who had shared in the desolation of our homes, and the abuse of our wives and daughters, were men who were worthy of the confidence of the government.”⁴¹ The demonstrably prejudiced Justice Paterson presided over Haswell’s trial, refusing to accommodate the time necessary for the defendant to call witnesses and even referring to him as “a seditious libeller of your government, a convict justly suffering the penalty of a mild law” in the presence of the jury.⁴² Needless to say, Haswell was found guilty and sentenced to two months in prison and a \$200 fine (equivalent to over \$5,000 in 2024).

Despite the relatively short length of the sentence, it still took its toll on Haswell; two months of inactivity left the *Vermont Gazette* bankrupt, and nine months after his release from prison, Haswell stated, “I have been reduced to distress, and almost to penury.”⁴³ This was far from an accident. The prosecution of a Democratic-Republican newspaper editor for criticizing a government agent’s treatment of an imprisoned congressperson, especially before a judge as politically skewed as Paterson, likely had a specific intended impact: the elimination of that individual as a threat to the Federalist administration in power.

The Federalist strategy of targeting outspoken Democratic-Republican figures continued with the prosecution of Democratic-Republican lawyer Thomas Cooper in Pennsylvania. Cooper had previously fled England due to

⁴⁰ *United States v. Haswell*, 26 F. Cas. 218 (C.C.D. Vt. 1800).

⁴¹ *Id.*

⁴² Bird, *supra* note 10 at 280.

⁴³ *Id.* at 281.



unresolved sedition charges.⁴⁴ Cooper's experience with newspaper editing started and ended with a two-month-long stint as an editor for the *Sunbury and Northumberland Gazette*.⁴⁵ Still, this was more than enough time for Cooper to find himself in hot water with the Federalists. In a leaflet distributed in Northumberland County, Pennsylvania in November of 1799, Cooper lamented how the Adams administration had left the US "saddled with the expense of a permanent navy" and "threatened [...] with the existence of a standing army," and commented that the nation's credit was "reduced so low as to borrow money at eight percent in time of peace, while the unnecessary violence of official expressions might justly have provoked a war."⁴⁶ Arguably the most innocuous statement to result in a criminal charge under the Sedition Act, Cooper's criticism of President Adams was nevertheless deemed libelous enough to have the lawyer indicted. In a trial heard by Supreme Court Associate Justice and staunch Federalist Samuel Chase, Cooper was forbidden from having the appropriate witnesses for his argument subpoenaed, leaving him unable to call any witnesses in his defense.⁴⁷ Additionally, Chase told the jury that the criminalization of supposedly seditious press "is necessary to the peace and welfare of this country," ordering the jurors to render a guilty verdict if Cooper had published the pamphlet and did so with the intent to defame (both of which Cooper had admitted to).⁴⁸ Cooper was convicted of seditious libel, receiving an unusually harsh sentence of six months in prison and a \$400 fine (equivalent to over \$10,000 in 2024). This egregious punishment, along with the fierce repudiation of jurors who did not follow his strict procedural guidelines, was

⁴⁴ *Id.* at 291-292.

⁴⁵ *Id.* at 293.

⁴⁶ *United States v. Cooper*, 25 F. Cas. 631 (C.C.D. Pa. 1800).

⁴⁷ Bird, *supra* note 10 at 296.

⁴⁸ *Id.* at 298-299.



one of many demonstrations of Justice Chase's explicit Federalist bias—a staple of Sedition Act prosecutions.⁴⁹

The penultimate indictment under the Sedition Act was that of James T. Callender, a prominent Democratic-Republican writer and contributor to the *Richmond Examiner*. In early 1800, Callender published *The Prospect Before Us*, a book in which he wrote that the “reign of Mr. Adams has been one continued tempest of malignant passions,” describing the “grand object” of the Adams administration as “to exasperate the rage of contending parties” and “to calumniate and destroy every man who differs from his opinions.”⁵⁰ Callender had previously drawn criticism from Federalist publications for referring to President Adams as a “hoary headed incendiary” and former President Washington as a “venal poltroon” (a combination of archaic terms describing a coward who is susceptible to corruption and bribery).⁵¹ Consequently, Callender was indicted on seditious libel charges, and once again, presiding Justice Chase issued a warrant for the writer's arrest.⁵²

As in previous trials heard by Chase, the defendant was railroaded. Utilizing common law libel standards, Chase charged that Callender could only be acquitted if he proved his condemnation of Adams as an aristocrat and an actor for British interests to be factual. In the judge's words, “You must prove both these points, or you prove nothing.”⁵³ When Callender's attorney attempted to argue that the Sedition Act infringed upon the defendant's First Amendment rights, Chase reportedly said that “it is not competent to the jury to decide on this point.”⁵⁴ Yet again, a guilty verdict for seditious libel was produced; Callender received a nine-month prison sentence and

⁴⁹ *United States v. Cooper*, *supra* note 46.

⁵⁰ *United States v. Callender*, 25 F. Cas. 239 (C.C.D. Va. 1800).

⁵¹ Berns, *supra* note 12 at 121.

⁵² Bird, *supra* note 10 at 306.

⁵³ *United States v. Callender*, *supra* note 50.

⁵⁴ Bird, *supra* note 10 at 308.



a \$200 fine. Following the Democratic-Republican takeover of Congress, Chase would be unsuccessfully impeached in 1804 for showing bias during jury selection and courtroom procedure, even after his repeated instances of prejudiced conduct in seditious libel cases.⁵⁵

VI. Conclusion

In total, thirty-nine individuals, all Democratic-Republicans, were criminally indicted for violating the Sedition Act between 1798 and 1800.⁵⁶ These defendants included newspaper editors, members of Congress, and other prominent Democratic-Republican figures. Virtually all of these cases shared common features. The vast majority were presided over by Federalist-appointed judges, often with political biases too severe to overlook. Most of these judges rejected any arguments questioning the constitutionality of the law itself. Many were also arguably tainted by xenophobic sentiments, be they against the Irish, the French, or other groups. It is difficult to ignore the evidence that the Sedition Act was a legal instrument of the Federalists, with the specific goal of using either a misinterpretation or an outright rejection of the First Amendment to disenfranchise their political opponents.

Yet, the repugnance of the Sedition Act still succeeded as an exercise of what happens when the unalienable is alienated; that is, when an erroneous interpretation of constitutional rights is weaponized by a political faction as a legal tool. Following the historic Democratic-Republican victory in the 1800 presidential and congressional elections, the federal government allowed the Sedition Act to expire.⁵⁷ This raises the question: did the Democratic-Republican revolution in Congress usher in the demise of the Sedition Act? Or alternatively, did Democratic-Republican commitment to the

⁵⁵ *Id.* at 308-312.

⁵⁶ *Id.* at 385.

⁵⁷ *Id.* at 368.



First Amendment in the face of Federalist revisionism cause the meteoric rise of the former's party? If the latter answer is the case, then surely a similar fall from political power would occur among any group that were to create a similar restriction of freedom of speech and press today.

