

tual, or terminate in a separation. Requisitions were a dead letter, unless the state legislatures could be brought into action; and when they were, the sums raised were very disproportionate. Unequal contributions or payments engendered discontent, and fomented state-jealousy. Whenever it shall be thought necessary or expedient to lay a direct tax on land, where the object is one and the same, it is to be apprehended, that it will be a fund not much more productive than that of requisition under the former government. Let us put the case. A given sum is to be raised from the landed property in the *United States*. It is easy to apportion this sum, or to assign to each state its quota. The Constitution gives the rule. Suppose the proportion of *North Carolina* to be eighty thousand dollars. This sum is to be laid on the landed property in the state, but by what rule, and by whom? Shall every acre pay the same sum, without regard to its quality, value, situation, or productiveness? This would be manifestly unjust. Do the laws of the different states furnish sufficient data for the purpose of forming one common rule, comprehending the quality, situation, and value of the lands? In some of the states there has been no land tax for several years, and where there has been, the mode of laying the tax is so various, and the diversity in the land is so great, that no common principle can be deduced, and carried into practice. Do the laws of each state furnish data, from whence to extract a rule, whose operation shall be equal and certain in the same state? Even this is doubtful. Besides, sub-divisions will be necessary; the apportionment of the state, and perhaps of a particular part of the state, is again to be apportioned among counties, townships, parishes, or districts. If the lands be classed, then a specific value must be annexed to each class. And there a question arises, how often are classifications and assessments to be made? Annually, triennially, septennially? The oftener they are made, the greater will be the expense; and the seldomer they are made, the greater will be the inequality, and injustice. In the process of the operation a number of persons will be necessary to class, to value, and assess the land; and after all the guards and provisions that can be devised, we must ultimately rely upon the discretion of the officers in the exercise of their functions. Tribunals of appeal must also be instituted to hear and decide upon unjust valuations, or the assessors will act *ad libitum* without check or control. The work, it is to be feared, will be operose and unproductive, and full of inequality, injustice, and oppression. Let us, however, hope, that a system of land taxation may be so corrected and matured by practice, as to become easy and equal in its operation, and productive and beneficial in its effects. But to return. A tax on carriages, if apportioned, would be oppressive and pernicious. How would it work? In some states there are many carriages, and in others but few. Shall the whole sum fall on one or two individuals in a state, who may happen to own and possess carriages? The thing would be absurd, and inequitable. In answer to this objection, it has been observed, that the sum, and not the tax, is to be apportioned; and that Congress may select in the different states different articles or objects from whence to raise the apportioned sum. The idea is novel. What, shall land be taxed in one state, slaves in another, carriages in a third, and horses in a fourth; or shall several of these be thrown together, in order to levy and make the quoted sum? The scheme is fanciful. It would not work well, and perhaps is utterly impracticable. It is easy to discern, that great, and perhaps insurmountable, obstacles must arise in forming the subordinate arrangements necessary to carry the system into effect; when formed, the operation would be slow and expensive, unequal and unjust. If a tax upon land, where the object is simple and uniform throughout the states, is scarcely practicable, what shall we say of a tax attempted to be apportioned among, and raised and collected from, a number of dissimilar objects.

The difficulty will increase with the number and variety of the things proposed for taxation. We shall be obliged to resort to intricate and endless valuations and assessments, in which every thing will be arbitrary, and nothing certain. There will be no rule to walk by. The rule of uniformity, on the contrary, implies certainty, and leaves nothing to the will and pleasure of the assessor. In such case, the object and the sum coincide, the rule and the thing unite, and of course there can be no imposition. The truth is, that the articles taxed in one state should be taxed in another, in this way the spirit of jealousy is appeased, and tranquillity preserved; in this way the pressure on industry will be equal in the several states, and the relation between the different subjects of taxation duly preserved. Apportionment is an operation on states, and involves valuations and assessments, which are arbitrary, and should not be resorted to but in case of necessity. Uniformity is an instant operation on individuals, without the intervention of assessments, or any regard to states, and is at once easy, certain, and efficacious. All taxes on expences or consumption are indirect taxes. A tax on carriages is of this kind, and of course is not a direct tax. Indirect taxes are circuitous modes of reaching the revenue of individuals, who generally live according to their income.

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*The Alien and Sedition
Acts (1798)*

The Alien and Sedition Acts grew out of two separate but intertwined issues. The first was the undeclared war with France, following the XYZ Affair. Relations between the United States and France had been deteriorating since 1796. In October 1797, American commissioners in Paris were told by three agents of the French government (known as Agents X, Y, and Z) that relations could be smoothed over with bribes of some \$240,000, plus a loan to the French government and that otherwise, France might declare war on the United States. In April 1798, President John Adams gave the XYZ correspondence to Congress, and soon many Americans were clamoring for war with France. Between 1798 and 1800, the two nations were in an undeclared war, in which ships were captured by both sides and a few battles were fought, mostly between the *U.S.S. Constellation* and various ships of the French navy. Starting in June 1798, Congress passed a series of laws making naturalization more difficult and allowing for the arrest and expulsion of aliens suspected of dangerous activities.

These laws were fundamentally directed at the crisis with France, but they had a political overtone. Most aliens and recently naturalized citizens gravitated to the political party, known as the Democratic-Republicans, headed by Thomas Jefferson. In 1796, Adams had defeated Jefferson for the presidency, but because Jefferson had the second largest number of electoral votes, he had become vice president. A nasty rematch was brewing for 1800.

In this context, on July 14, 1798 (which was ironically Bastille Day, the French national holiday), Congress passed the Sedition Act, which was designed to prevent criticism of President Adams in the upcoming election. The law was to be in force from its passage until March 4, 1801, the day the new president would be inaugurated. The first person convicted under the law was Congressman Matthew Lyon, who was imprisoned and fined \$1,000 for publishing a letter, written before the law was passed, in which he called John Adams "pompous" and "foolish." A handful of newspaper editors were also convicted, as was a man in a bar who uttered some harmless but vulgar comments about President Adams. When Thomas Jefferson became president, he immediately pardoned all those convicted under the law, and Congress ultimately remitted their fines. However, as president, the notoriously thin-skinned Jefferson urged his friends to initiate state prosecutions against his critics.

See James Morton Smith, *Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties* (1956); John C. Miller, *Crisis in Freedom: The Alien and Sedition Acts* (1951); Leonard W. Levy, *Jefferson and Civil Liberties: The Darker Side* (1963); and Leonard W. Levy, *Emergence of a Free Press* (1985).

A. Naturalization Act of 1798

Act of June 18, 1798

CHAP. LIV. — *An Act supplementary to and to amend the act, intitled "An act to establish an uniform rule of naturalization, and to repeal the act heretofore passed on that subject."*

SECTION 1. *Be it enacted* . . . That no alien shall be admitted to become a citizen of the United States, or of any state . . . he shall have declared his intention to become a citizen of the United States, five years, at least, before his admission, and shall, at the time of his application to be admitted, declare and prove, to the satisfaction of the court having jurisdiction in the case, 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, besides conforming to the other declarations, renunciations and proofs, by the said act required, anything therein to the contrary hereof notwithstanding . . .

SEC. 4. *And be it further enacted*, That all white persons, aliens, (accredited foreign ministers, consuls, or agents, their families and domestics, excepted) who, after the passing of this act, shall continue to reside, or who shall arrive, or come to reside in any port or place within the territory of the United States, shall be reported, if free, and of the age of twenty-one years, by themselves, or being under the age of twenty-one years, or holden in service, by their parent, guardian, master or mistress in whose care they shall be, to the

clerk of the district court of the district, if living within ten miles of the port or place, in which their residence or arrival shall be, and otherwise, to the collector of such port or place, or some officer or other person there, or nearest thereto; who shall be authorized by the President of the United States, to register aliens: And report, as aforesaid, shall be made in all cases of residence within six months from and after the passing of this act, and in all after cases within forty-eight hours after the first arrival or coming into the territory of the United States, and shall ascertain the sex, place of birth, age, nation, place of allegiance or citizenship, condition or occupation, and place of actual or intended residence within the United States, of the alien or aliens reported, and by whom the report is made. And it shall be the duty of the clerk, or other officer, or person authorized, who shall receive such report, to record the same in a book to be kept for that purpose, and to grant to the person making the report, and to each individual concerned therein, whenever required, a certificate of such report and registry; and whenever such report and registry shall be made to, and by any officer or person authorized, as aforesaid, other than the clerk of the district court, it shall be the duty of such officer, or other person, to certify and transmit, within three months thereafter, a transcript of such registry, to the said clerk of the district court of the district in which the same shall happen; who shall file the same in his office, and shall enter and transcribe the same in a book to be kept by him for that purpose. And the clerk, officer or other person authorized to register aliens, shall be entitled to receive, for each report and registry of one individual or family of individuals, the sum of fifty cents, and for every certificate of a report and registry the sum of fifty cents, to be paid by the person making or requiring the same, respectively. And the clerk of the district court, to whom a return of the registry of any alien, shall have been made, as aforesaid, and the successor of such clerk, and of any other officer or person authorized to register aliens, who shall hold any former registry, shall and may grant certificates thereof, to the same effect as the original register might do. And the clerk of each district court shall, during one year from the passing of this act, make monthly returns to the department of State, of all aliens registered and returned, as aforesaid, in his office.

B. The Alien Friends Act

AN ACT CONCERNING ALIENS

Act of June 25, 1798

Sec. 1. *Be it enacted* . . . That it shall be lawful for the President of the United States at any time during the continuance of this act, to *order* all such *aliens* as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of the territory of the United States, within such time as shall be expressed in such order, which order shall be served on such alien by delivering him a

copy thereof, or leaving the same at his usual abode, and returned to the office of the Secretary of State, by the marshal or other person to whom the same shall be directed.

And in case any alien, so ordered to depart, shall be found at large within the United States after the time limited in such order for his departure, and not having obtained a *license* shall not have conformed thereto, every such alien shall, on conviction thereof, be imprisoned for a term not exceeding three years, and shall never after be admitted to become a citizen of the United States.

Provided always, and be it further enacted, that if any alien so ordered to depart shall prove to the satisfaction of the President, by evidence to be taken before such person or persons as the President shall direct, who are for that purpose hereby authorized to administer oaths, that no injury or danger to the United States will arise from suffering such alien to reside therein; the President may grant a *license* to such alien to remain within the United States for such time as he shall judge proper, and at such place as he may designate.

And the President may also require of such alien to enter into a bond to the United States, in such penal sum as he may direct, with one or more sufficient sureties to the satisfaction of the person authorized by the President to take the same, conditioned for the good behavior of such alien during his residence in the United States, and not violating his license, which license the President may revoke, whenever he shall think proper.

Sec. 2. *And be it further enacted*, That it shall be lawful for the President of the United States, whenever he may deem it necessary for the public safety, to order to be removed out of the territory thereof, any alien who may or shall be in prison in pursuance of this act; and to cause to be arrested and sent out of the United States such of those aliens as shall have been ordered to depart therefrom and shall not have obtained a license as aforesaid, in all cases where, in the opinion of the President, the public safety requires a speedy removal.

And if any alien so removed or sent out of the United States by the President shall voluntarily return thereto, unless by permission of the President of the United States, such alien on conviction thereof, shall be imprisoned so long as, in the opinion of the President, the public safety may require.

C. *The Alien Enemies Act*

AN ACT RESPECTING ALIEN ENEMIES

July 6, 1798

SECTION 1. Be it enacted . . . That whenever there shall be a declared war between the United States and any foreign nation . . . 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. And the President of the United States shall be, and he is hereby authorized, in any event, as aforesaid, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, towards the aliens who shall become liable, as aforesaid; the manner and degree of the restraint to which they shall be subject, and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those, who, not being permitted to reside within the United States, shall refuse or neglect to depart therefrom; and to establish any other regulations which shall be found necessary in the premises and for the public safety: Provided, that aliens resident within the United States, who shall become liable as enemies, in the manner aforesaid, and who shall not be chargeable with actual hostility, or other crime against the public safety, shall be allowed, for the recovery, disposal, and removal of their goods and effects, and for their departure, the full time which is, or shall be stipulated by any treaty, . . . and where no such treaty shall have existed, the President of the United States may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality.

D. *The Sedition Act of 1798*

AN ACT IN ADDITION TO THE ACT, ENTITLED "AN ACT FOR THE PUNISHMENT OF CERTAIN CRIMES AGAINST THE UNITED STATES"

July 14, 1798

SEC. 1. Be it enacted . . . That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, which are or shall be directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the government of the United States, from undertaking, performing or executing his trust or duty; and if any person or persons, with intent as aforesaid, shall counsel, advise or attempt to procure any insurrection, riot, unlawful assembly, or combination, whether such conspiracy, threatening, counsel, advice, or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanor, and on conviction, before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years; and further, at the discretion of the court may be holden to find sureties for his good behaviour in such sum, and for such time, as the said court may direct.

SEC. 2. . . . That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or publishing, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

SEC. 3. . . . That if any person shall be prosecuted under this act, for the writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defence, the truth of the matter contained in the publication charged as a libel. And the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases.

SEC. 4. . . . That this act shall continue and be in force until the third day of March, one thousand eight hundred and one, and no longer: Provided That the expiration of the act shall not prevent or defeat a prosecution and punishment of any offence against the law, during the time it shall be in force

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The Kentucky and Virginia Resolutions (1798)

In the face of rising provocations from France, especially following the publication of the XYZ correspondence in the spring of 1798, the Federalists in Congress seized upon the patriotic mood of the nation to push through the Alien and Sedition Laws in 1798. The most prominent Federalist leader, Alexander Hamilton, opposed the Sedition Act, but he was not in government at the time, and no one in his party heeded his advice. The three alien laws certainly fell within Congress's power to regulate immigration and naturalization. The Sedition Law, however, made criticism of the president or the government a crime and was designed to silence the vociferous pamphleteers and newspaper editors critical of the Adams administration and its allegedly pro-British policies.

In many ways the Sedition Act evoked the old British law of seditious libel, which made the mere impugning of the reputation of public officials an offense.

Scholars have pointed out that following Zenger's case (Document 10), the law of seditious libel fell into disuse. The Sedition Act of 1798 implemented most of the arguments of Zenger's lawyer, including allowing truth as a defense and allowing a jury to determine whether the offensive statements were libelous. However, in political cases truth had little relevance. Luther Baldwin of New Jersey had to pay a \$100 fine for wishing out loud that the wad of a salute gun would hit President Adams in the rear, while Congressman Matthew Lyons spent four months in jail and paid a \$1,000 fine for ridiculing Adams's "unbounded thirst for ridiculous pomp, foolish adulation and selfish avarice." How could one determine if it was true or false to call Adams pompous?

Although critics charged that the law violated the First Amendment, the courts never adjudicated the constitutional issue, and no case under the law ever went to the Supreme Court. Moreover, it is not likely that the courts, given the views of free speech at the time, would have found it unconstitutional. It is worth noting that in the twentieth century, with presumably an enlightened view of freedom of speech, the national government would enact similar laws and similarly punish harmless critics of the government and its policies.

The 1798 law evoked impassioned outcries from the Jeffersonians that they were the real targets of the Sedition Act, a claim justified by highly partisan prosecutions. In November 1798, the Kentucky legislature adopted a resolution secretly drafted by Thomas Jefferson, and the following month, Virginia followed suit with one written by James Madison. Both complained about the substantive nature of the laws, but mostly focused on the issue of states' rights. They are remembered today for their defense of free speech, but in reality, the thrust of the resolutions, especially the Kentucky Resolutions penned by Jefferson, was towards states' rights and opposition to a strong national government. It is worth noting that the Kentucky Resolutions do not attack the idea of libel laws, but only argue that the definition of such crimes must remain in the hands of the states.

See James Morton Smith, *Freedom's Fetters* (1956); Adrienne Koch, *Jefferson and Madison* (1950); Leonard W. Levy, *Emergence of a Free Press* (19); and Walter Berns, "Freedom of the Press and the Alien and Sedition Laws: A Reappraisal," 1970 *Supreme Court Review* 109 (1971).

~~—~~The Kentucky Resolutions

November 16, 1798

~~4. Resolved, That the several states composing the United States of America are not united on the principle of unlimited submission to their general government; but that by~~

Source: Jonathan Elliot, ed., *4 The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 528 (1888; reprint, 1987)