Volume II: Issue 9

The BEACON OF LIBERTY

A Structured Curriculum of Constitutional Study

Clause Discussed:
• Article I, Section 8, Clause 1

Concept Discussed:
• To lay and collect Duties

The Act of March 3rd, 1791 (I Stat. 199), previously covered, laid domestic Duties on alcohol distilled in the United States from local products. It also imposed a Duty on the capacity of all stills distilling spirits outside any city, town or village. The mere enactment of this legislation by Congress, however, did not ensure (prompt) payment of the Duties therein imposed.

In the sparsely-populated American frontier (the Western backwoods areas of the mid and lower Eastern States), there were few persons willing to accept (or accept and then keep) the role of the Collector of the Revenue. Those who accepted this position often regretted their decision as they were chased out of town, before or after being tarred and feathered.

Without a District revenue agent, those liable to pay the Duty were expected to travel to other districts to enter their stills on the rolls and pay their Duties to an agent where found. Seldom was this done — and the *Whiskey Rebellion* was born.

President George Washington was displeased that an Act of Congress was being openly defied and that court processes were being ignored. It became quickly evident that Alexander Hamilton's Duty level "as high as will be consistent with the practicability of a safe collection" had already been surpassed.

In his Proclamation[1] of August 7th, 1794, Washington writes of combinations of subversive activities to "defeat the execution of laws laying duties on spirits distilled within the United States, and upon stills" and of combinations of persons acting to "forebear the execution of certain official duties touching processes issuing out of a Court of the United States".

The primary purpose for Washington's **Proclamation** was his command therein for:

> "all persons, being insurgents…to disperse and retire peaceably to their respective abodes."

This command was in due conformity with Section 3 of "*An Act to provide for calling forth the Militia to execute the laws of the Union, suppress insurrections and repel invasions*" (I Stat. 264, May 2, 1792).

Section 2 of the Act to call forth the militia stated:

> "That whenever the laws of the United States shall be opposed, or the execution thereof obstructed…by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by this act…it shall be lawful for the President of the United States to call forth the militia…to suppress such combinations, and to cause the laws to be duly executed."

Section 3 mandated that a command of dispersal be given to the insurgents prior to the use of military force:

> "That whenever it may be necessary, in the judgment of the President, to use the military force hereby directed to be called forth, the President shall forthwith, and previous thereto, by proclamation, command such insurgents to disperse, and retire peaceably to their respective abodes, within a limited time."

In September, Washington issued a second Proclamation[2] after the "proffered lenity" of his first had been "perversely misinterpreted". Washington mustered into service militia (including from neighboring States) to the primary "scene of disaffection" — the Western counties of Pennsylvania.

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1. Volume III, Annals of Congress, Appendix, pp.1411-1413.
2. Ibid., pp.1413-1415.

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The blatant show of federal force (approximately 12,000 militiamen) efficiently accomplished the immediate goal of returning order to the counties of "Washington and Alleghany". The Whiskey Rebellion was quickly quelled by the militia and federal process-serving procedures were restored.

Calling forth the militia to put down the Whiskey Rebellion brought back too many disconcerting memories (of British actions used to forcefully quell Colonial discontent over various British taxes) to too many Americans too near the Revolution to be fully effective, however.

As is often the case, strong-arm tactics of government sow the seeds of discontent, bringing into sharper focus areas of nagging concern. Thus, the open rebellion against the Duties on domestic spirits, even though ending in short-term failure, can also then be viewed as quite effective when viewed over a longer time-frame.

Coupled with other actions below listed, authoritative government action (pre-Civil War era) reached a peak by 1800. With the election of Thomas Jefferson as President and election of a Democratic-Republican-controlled Congress, government power outside the strict bounds of the Constitution subsided. Soon, domestically-oriented Duties ceased for over two generations (except during the War of 1812).

Growing Resentment Against Authoritative Government Action

Domestically-oriented Duties, not only those laid upon distilled spirits and stills, but also those laid on horse carriages and items sold by auction in 1794, caused a general uneasiness among Americans who felt they threw off one tyrant only to accept another (which is the historical model of attempts at liberty).

In 1797, the stamp Duties laid on Vellum, Parchment and Paper (on legal instruments — certificates of naturalization, Letters Patent for land, licenses to practice law, wills, insurance policies, bonds, bills, notes, etc.) were held in similar light as the onerous Stamp Acts of the British Parliament of 1765.

The growing resentment against a commanding government of the United States (more precisely, against the Federalist Party), however, was not merely limited to the laying of domestic Duties.

The Federalist Party, under the direction of such luminaries as John Adams and Alexander Hamilton, generally represented the monied interests of the North who pushed for a strong, central government ruling over and over-ruling weak States, favoring industrial and banking interests.

The new Democratic-Republican Party of Jefferson and Madison, alternatively, promoted an expressly-limited central government with a strong presence of the States where agrarian interests predominated.

The French Connection

Thomas Jefferson, who played such a pivotal role in the Declaration of Independence[3], had no part in the formation of the Constitution. Jefferson was absent from the Convention in 1787 because he (succeeding Benjamin Franklin) became Minister Plenipotentiary to France in 1785 (returning to the United States in 1789 to assume the position of first Secretary of State under the new constitutional government).

While Jefferson's input at the convention would have likely been invaluable, Jefferson enjoyed his stay in France. France, after all (under the reign of King Louis XVI), had played an important role (financial and political supporter) in the fight for American independence.

The cultivation and maintenance of foreign relations was important for America as her domestic manufacturing capabilities were then yet primitive. Treaties allowing for favorable foreign-trade relations helped her prosper, and Duties on imported goods supported the general government while they gave a competitive edge to American producers.

Jefferson felt a warm connection with the French people from his years of stay there — it is perhaps not surprising that Jefferson sided with the French Revolutionists when they began their quest for political freedom.

French methods of seeking freedom were inconsistent with their stated goal of liberty, however. The French, through their ruthless behavior, singularly took to heart Jefferson's statement (while ignoring many of his ideas):

> "The tree of liberty must be refreshed from time to time with the blood of patriots & tyrants."[5]

Alexander Hamilton, likely viewing the French tactics as illogical and short-sighted, sided with the monied English against France. Washington, ignoring both, maintained neutrality, as he later detailed in his

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3. Thomas Jefferson, principal author of the Declaration, was one of five committee members chosen to draft the said declaration. On June 11, 1776, Jefferson, John Adams, Benjamin Franklin, Roger Sherman, and Robert Livingston were chosen as the committee to prepare a declaration.[4]

4. Vol. V, Journals of the Continental Congress, pg. 431.

5. Letter to William Stephens Smith, November 13, 1787. *The Papers of Thomas Jefferson*, Volume 12, pg 355 @ 356. Edited by Julian P. Boyd, Princeton University Press, 1955.

famous **September 17, 1796 Farewell Address**:

> "The great rule of conduct for us, in regard to foreign nations, is, in extending our commercial relations, to have with them as little *political* connexion as possible".[6]

The French attempt at freedom followed the historical norm and highlights the exception that was the United States at seeking *and achieving* Liberty. The French threw off their king to find only anarchy, poverty, terror, and ultimately Napoleon Bonaparte as First Consul.

The French Revolutionaries perfected beheading-by-guillotine: Maximilien de Robespierre, President of the revolutionary National Convention, instilled terror throughout France until he and his followers were likewise beheaded (Louis XVI suffered the fate of the guillotine in January of 1793 and Queen Marie Antoinette later that year, as did thousands of other royalty and government personnel).

Alien and Sedition Acts

In 1798, Congress and President Adams began providing for the inevitability of war with France, which had sunk or captured hundreds of American trading vessels (to prevent British trade). In the months of June and July, the Federalist Congress and Adams enacted a number of significant acts which greatly alarmed the Democratic-Republicans.

The enactment of the first direct Tax (I Stat. 597) on July 14th to provide funds to better equip the navy to fight the pending war with France, though significant, is momentarily unimportant for this current study.

Congress and President Adams, citing war-preparations against France as the reason, enacted four Acts now notoriously known as the *Alien and Sedition Acts* in 1798. In that President Adams did not specifically avail to himself the powers granted by the Alien Acts, but did enforce the Sedition Act, the Democratic-Republican's charge that the purpose of these Acts was really to quiet *them* is not altogether unfounded.

The first Act (I Stat. 566, June 18, 1798) regarded naturalization. The process of naturalization was made far more stringent, requiring 14 years of residency versus the five-year requirement under earlier naturalization laws. Making the residency requirements more stringent kept many foreigners from legally becoming naturalized Citizens; thus they were yet viewed as *Aliens*.

"*An Act concerning Aliens*" (I Stat. 570 @ 571), enacted June 25, 1798, empowered the President 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."

In "*An Act respecting Alien Enemies*" (I Stat. 577, July 6, 1798), male nationals (over 14 years of age) of foreign governments, which government was in a declared war with the United States, living in the United States, who had not yet become naturalized, were liable to be "apprehended, restrained, secured and removed, as alien enemies".[7]

The final of the four Acts, the **Sedition Act** (I Stat. 596, July 14, 1798), declared it unlawful, under a penalty of a $5,000 fine and a five-year imprisonment, to:

> "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."
>
> **Section 2** also stated:
>
> "That if any person shall write, print, utter or publish…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 to bring 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 stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States…then such person, being therefore convicted…shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years."

6. Vol. VI, Annals of Congress, Appendix, pg. 2869, @ pg 2878.

7. This mentality of distrust has continued in government, realizing its peak with the internment of United States Citizens of Japanese descent (rather than merely deportation of aliens) during World War II.

This distrust is yet prevalent in post-9-11-2001 America, with the profiling of Citizens or guests of Middle-Eastern descent. In that there is some credence to this thought (that certain persons may be more loyal to their homeland than their new-found home of limited duration, when the two are at odds), it can prove to be a moral dilemma to chose between pre-emptive attempts to minimize perceived threats & waiting for actual violence to occur and then combat, minimize, & punish (at least when viewing *safety* over *liberty*, as if, ultimately, the two are incompatible).

In response to the Alien and Sedition Acts (under the latter, numerous Democratic-Republican newspaper publishers and pamphleteers were indicted, tried, convicted, and punished [i.e., those publicly opposing the Federalist administration and policies were effectively silenced]), Thomas Jefferson and James Madison penned some now-famous resolutions supporting State nullification of unauthorized federal laws.

Jefferson wrote, and the Kentucky legislature authorized, the *Kentucky Resolutions*[8] of November, 1798 and 1799.

Madison wrote, and the Virginia legislature issued, the *Virginia Resolutions*[9] of December, 1798.

The **1798 Kentucky Resolutions** is from where Jefferson's famous line comes:

> "In questions of power, then, let no more be said of confidence in man, but bind him down from mischief by the chains of the Constitution."

The **1799 Kentucky Resolutions**, seeking to "escape the fangs of despotism", proposed:

> "That the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of the infraction; and, That a nullification, by those sovereignties, of all unauthorized acts done under color of that instrument, is the rightful remedy."

A main principle of the **Virginia Resolutions** was:

> "The powers of the federal government as resulting from the compact to which the states are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no further valid than they are authorized by the grants enumerated in that compact ; and that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states, who are parties thereto, have the right, and are in duty bound, to interpose, for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties, appertaining to them."

Jefferson and Madison were correct in their supposition that the Alien Acts at least challenged the American *ideal* of liberty and the *spirit* of the Constitution. Even more plainly, the Sedition Act violated the *intent* of the Constitution as well as the *express wording* of the First Amendment.

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8. Vol. 4, Elliott's Debates, page 540.
9. Ibid, page 528.
10. Ibid, pp. 546 - 580.

The excellent Report[10] of Madison analyzing the Virginia Resolutions in substantial detail following negative responses from the other States, strongly supported the Resolutions' earlier position that the actions of Congress and the President were outside their lawful authority.

The analyses and actions of Madison and Jefferson must be separated from their proposed *remedies*, however.

The concept of the States working *together* to invalidate a federal action cannot be argued. Article V of the Constitution plainly and clearly provides that Amendments may be ratified by three-fourths of the States. Through this process (Amendment and Convention), the powers of the general government can be expanded, contracted, or even eliminated.

The 11th Amendment stands as the proper testament to the authority of the States to clarify the meaning of the Constitution, which, of course, they created and ratified.

Jefferson and Madison were not proposing *unified* action, however, but that a State *individually* could nullify a federal law which was based upon improper authority, within the borders of that State.

Jefferson writes in the **1798 Kentucky Resolutions**:

> "each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress."

Madison writes in the Virginia Resolutions that when, by the general government, there is a "a deliberate, palpable, and dangerous exercise of other powers not granted", that it is the right of a State, within her boundaries, to "interpose" between such action to protect the State and its Citizens against unwarranted federal action.

In essence, Jefferson and Madison were stating that a State could singularly enforce the Constitution via the Tenth Amendment within her boundaries against unjustified federal action.

In the strictest of terms, one must hold this principle valid, certainly at least as a last resort prior to succession from, or war against, the Union.

As an effective tool of individual action, however, one has but little choice but to come to the same conclusion as Jefferson and Madison must have[11]; that without widespread support through most or at least many of the States, the concept of individual State nullification was ineffective, if not dangerous.

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11. Though they *proposed* the process of State nullification, the process Jefferson and Madison actually *used* was to seek a general consensus amongst the principals (the States) to the compact that was the Constitution.

In the last two paragraphs of the **Virginia Resolutions**, Madison writes:

> "The General Assembly doth solemnly appeal to the like dispositions in the other states, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional; and that the necessary and proper measures will be taken *by each* for cooperating with this state, in maintaining unimpaired the authorities, rights, and liberties, reserved to the states respectively, or to the people.
>
> "That the governor be desired to transmit a copy of the foregoing resolution to the executive authority of each of the other states, with a request that the same may be communicated to the legislature thereof, and that a copy be furnished to each of the senators and representatives representing this state in the Congress of the United States."

When other States passed resolutions *against* such State nullification procedures and of a willingness to abide by the actions of Congress[12], Kentucky and Virginia had but little choice to follow the lead of the other States and fold their hand.

Thus, rather than to actually seek to nullify the improper federal laws within the boundaries of Kentucky and Virginia at the risk of initiation of federal force against them, or succeed from the Union, they sought other lawful means to remedy their situation (which, incidentally [and significantly], were sufficient).

It does not follow that an individual or single entity uniting with others can maintain his, her, or its independence while also properly maintaining the partnership (union). The idea that each entity has an unlimited ability to define the extent of the union within its physical bounds is a concept fraught with inherent instability of that union.

Only by staying completely separate can one choose one's course within the given extent of one's choice and ability. The States knew that their ability to maintain their independence from powerful foreign interests lay only through *joint* effort; that their union with one-another gave them a far greater degree of independence than could be ultimately enjoyed individually.

It is true, of course, that each State willingly agreed only to give up certain specified powers. Those powers ceded did not include those powers withheld. Within the express terms of the agreement, a State could not be forced to involuntarily cede withheld powers against her will (short of ratification of a new Amendment by the three-fourths majority of the States).

Three-quarters of the States could force one-quarter of the States to cede additional power, if done properly, and consistent with the principles of the remainder of the Constitution.

To bypass the Amendment process, however, and simply have Congress enact laws greater than allowed by the Constitution (or expressly prohibited by it), is an event to which no State ever agreed. What cannot be done legitimately can neither be done illegitimately.

The Ten-Million-Dollar-Question, of course, is how the States would be able to properly and effectively defend against that usurpation, short of the use of force. The answer points to the reason why the First Amendment (free speech and free press) is listed before the Second (right to arms).

Fall of the Alien and Sedition Acts

Two sections of the Sedition Act provided more than ample direct legal defense against it (at least when viewed from a long-term perspective and certainly from the perspective as a nation as a whole).

Section 4 of the Sedition Act limited the duration of the Act only to "the third day of March, one thousand eight hundred and one, and no longer", which coincided with the last day of the next congressional term, of what became the last day of the Adams' presidency.

The sunset of the law was thus as inevitable as the ending of a Presidential term. It required positive action through re-enactment to continue past March 3, 1801.

An unjust law whose action becomes broadly known is much harder to re-enact than to enact initially when its actions are unknown. As it ultimately played out, neither the Sixth nor the Seventh Congresses were able to form a majority to extend or re-enact the law; it thus ceased operation according to its deadline.

Even if the law itself had provided for indeterminate existence (without sunset), the government structure enacting it doesn't have such an indeterminate existence (even the supreme Court Justices, sitting during *good* behavior, eventually [retire or] die).

Every *second* year the entire House of Representatives and one-third of the Senate are thrown out of their seats and every *fourth* year the President from his office. Those desiring to keep their positions must re-apply and be re-elected to continue (with the further protection since FDR's *four* elections, the President's terms are limited to *two* elections by the 22nd Amendment [essentially eight years, though potentially as little as six or as many as one day less than 10 years]).

12. See Vol. 4, Elliott's Debates, beginning at page 532 for answers of the several State Legislatures to the Virginia and Kentucky Resolutions.

A changing of the guard provides opportunity to correct the wrong path and ill choices of the old guard.

In that both Houses of Congress and the President worked together to pass the Alien and Sedition acts, it would be unlikely that the corrective process for the Sedition Act would come from any of these parties (at least without an intermediary election, leading to a change in the parties themselves).[13]

The Courts, having no part in *enacting* law, play a primary role in the *enforcement* of it. Through such direct power, the courts have assumed the indirect power of judging the impropriety of any law when the situation so demands it.

Though no such express authority was given within the Constitution (only the President is given the express authority to *execute* the laws of the United States), every officer (and member) swears an oath or gives an affirmation to uphold the Constitution. Therefore, when any law enacted by Congress is at odds with the Constitution, every officer must uphold the Constitution and any contradictory "law".

Those opposed to the Alien and Sedition Acts could work to foment change in government itself; the age-old practice of working to elect "the right person". The making of elections as the *be-all* and *end-all* of politics, the *make-or-break* point in upholding proper government is well-familiar with most every American in the 21st century. This procedure has the decided disadvantage of incongruity in government which a constituted republic should provide, however. It also adds to the *winner-take-all* nature of political elections.

A better alternative is to best learn how to enforce the Constitution. One cannot well-enforce the Constitution without knowing it. Learning well the Constitution is the proper first step to living under it.

Learning well the Constitution is the proper first step to living under it.

When the Constitution is being subverted in practice and ignored in action, the next step is to learn the actual mode used to bypass its impassable commands.

Knowing these primary items (what the Constitution is and how a law attempts to bypass it) leads one to the proper means to combat the encroachment upon liberty (no matter *who* is in office).

13. It is theoretically possible, of course, that a better-attended session of both Houses could over-rule an action which was passed by a simple majority of the minimum quorum of each (and even over-ride the President's veto, if necessary), without any person originally voting changing his mind.

Jefferson and Madison knew well the Constitution — they also knew how to properly support it.

It is thus perhaps not surprising that they were able to significantly correct the course of government action back to within its proper constitutional bounds for decades to come when the first major threat to liberty occurred.

Section 3 of the Sedition Act explicitly provided seeds of its own proper demise even outside the strict lines of government action, and possibly even before its sunset, stating that:

> "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."

It is perhaps surprising today that a law, especially a law so expansive and such a threat to liberty, would squarely declare within it that a jury trying any cause under it would have the right to determine not only the *facts* of the case, *but also the right to determine the validity of the law itself.*

It must be realized that even if Congress had not included the wording of Section 3 within the Act, any jury trying any case of Sedition would still have that authority.

It was not this law itself which *gave* the jury such power and right, for the rights and powers of juries were established long antecedent to the Constitution.

Jury Nullification

The first case of the independent jury is provided by William Penn while still in England in 1670. He was jailed for preaching a sermon which was not located in a Church of England church, in contrast to law. The jurors hearing his case brought back a verdict that he was "guilty of speaking in Grace-Church-Street" (but not of any crime). The judge was furious and imprisoned the jury. After days without food, water, heat, or toilets, some gave in. Others were freed only months later when the Court of Common Pleas, acknowledging their independence, ordered their release.

The right of the jury to try the law itself was firmly established in colonial America in the case against John Peter Zenger in 1735. Zenger, publisher of the *New York Weekly Journal*, printed articles which were critical of New York Provincial Governor William Cosby.

After two failed attempts to have a Grand Jury indict Zenger, Cosby bypassed the independent Grand Jury and ordered the Attorney General to issue an information directly against Zenger purporting libel. Based upon this information, the Court Justices issued a bench warrant for Zenger's arrest.

Zenger, through his attorney, Andrew Hamilton, admitted at trial to the publishing of articles critical of the governor. Hamilton, however, proposed the novel concept in colonial America that:

> "Nature and the Laws of our Country have given us a Right — the Liberty — both of exposing and opposing arbitrary Power...by speaking and writing Truth."[14]

The Attorney General, in his argument against Zenger, stated clearly the actual position of the colonial law, that truth was no defense against seditious libel:

> "As Mr. Hamilton has confessed the printing and publishing of these Libels, I think the Jury must find a Verdict for the King; For supposing they were true, the Law says that they are not the less libelous for that; nay indeed the Law says, their being true is an Aggravation of the Crime."

The judge backed the prosecution's position, stating:

> "The Law is clear, that you cannot justify a Libel."

Despite the actual law, and the judge's express orders, the jury issued the verdict "Not Guilty", freeing Zenger and effectively setting aside the colonial libel law by the process of jury nullification. American Law has maintained the principle (though not necessarily its *use*) of jury nullification since Zenger's bold stance.

The people who established government in the United States of America withheld from government the power to nullify or impede the people's proper authority to determine the validity of *any* law the government may enact that comes before them.

The Sedition Act merely then quoted a principle well understood in that day; that government may enact law, but this does not invalidate a jury's ability to nullify it.

Government may *enact* law, but this does not invalidate a jury's ability to *nullify* it.

Today, unfortunately, the concept of jury nullification is little understood and rarely heard, except possibly as that of a quaint notion of early American law.

Also, unfortunately, the proper source of the power of law is held inversely to its actual source today. The progression of authority is today *proposed*:

> Federal authority > State authority > Local authority > Man. (God is left out of the picture).

The actual authority and order upon which the governments of the United States of America are built is as follows:

> God > Man > Family > Community > State > Federal.

Authoritarian government, of course, does not well tolerate threats to its validity. Government will not educate Americans of the proper means of circumscribing and limiting government power.

It is the established court practice of judges today to direct juries only to determine the *facts* of any case before them. When juries are only "able" to determine *facts,* judges are thereby left un-encumbered to determine the *law*.

When juries only determine *Facts*, judges are thereby left unecumbered to determine the *Law*.

The express statement in the Sedition Act of the legal principle that juries have the "right to determine the law and the fact…as in other cases" supports that principle in most all cases (strictly, it acknowledges the principle in some indeterminate level of cases).

That the jury may determine the law by *right* means that it is not a mere *privilege*; that it is irrevocable, not subject to the whim of any judge.

Early American law freely supported and even occasionally promoted the concept of jury nullification. The listing in the Sedition Act of the right of the jury to determine the validity of law was likely done for a number of reasons.

First was the acknowledgement that this Act would act directly upon *individuals*. A relative few Congressional Acts acted directly on Citizens themselves (most only indirectly or not at all).

It should be noted that the law was making it a federal *crime* to write "false, scandalous and malicious writing or writings against the government of the United States…"

As acknowledged in the Kentucky Resolutions, the only federal crimes clearly supported by the Constitution were *Treason* (Article III, Section 3), *counterfeiting the Securities and current Coin of the United States* (Art. I:8:6) and *Piracy* (and Felonies committed on the high Seas and Offences against the Law of Nations) [Art. I:8:10].

Congress, in attempting to create the federal crime of sedition, unsupportable by the Constitution, likely was deferring to the authority of the jury the question as to whether Congress *could* enact such a law as the one against Sedition.

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14. *A Brief Narrative of the Case and Trial of John Peter Zenger, Printer of the New-York Weekly-Journal*. New-York, Printed: Lancaster Re-printed, and Sold by W. Dunlap, at the New-Printing-Office, in Queen-Street, 1756. Microfiche reference: Early American Imprints: Evans Collection, Call # 7824.

If juries did not revoke such authority upon any hearing of such case, the people by their direct action and apart from the proper structure of government, would indirectly authorize that ability.

Unfortunately, the jury system cannot take credit for nullifying the Sedition Act, though many juries failed to enforce it. Stories of packed juries (with Federalist supporters) abound in the cases ending with conviction. The Sixth Amendment guarantee of an *impartial* jury was likely ignored as much as the First Amendment guarantee of free speech or freedom of the press!

Such antics, though immediately successful, lead to the proper and effective demise of the Federalist Party and Adams became the first one-term President.

Not only was a Democratic-Republican Congress elected in 1800, but this was the first of a long string of Democratic-Republican Presidents (even if not strictly by name, but of like ideology): Jefferson was elected to two terms, followed by James Madison, James Monroe, John Q. Adams (one term), Andrew Jackson, and others.

With the election of Jefferson, any publishers still jailed were quickly pardoned. Congress, being slow to respond (as is common), ultimately did the right thing and repaid fines (at interest) to publishers (or heirs) who paid a fine for sedition.

For example, on July 29, 1850, Congress finally authorized payment to the heirs of the late Dr. Thomas Cooper. Congress passed the following Act (IX Stat. 799):

> *"An Act to refund the Fine imposed on the late Dr. Thomas Cooper, under the Sedition Law, to his Heirs.*
>
> *"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to refund to the heirs of Thomas Cooper, deceased…four hundred dollars, being the fine imposed upon the said Thomas Cooper under the sedition law passed the fourteenth day of July, seventeen hundred and ninety-eight, together with interest thereon, at the rate of six per centum per annum from the first day of November, eighteen hundred, until paid."

It would have been proper for those government officials and legislative members who enacted the Sedition Act to suffer some form of punishment for their transgressions (other than fail at re-election).

In that they didn't, it is at least comforting to know that such attempts at omnipotent government behavior which clearly threatened American liberty made a lasting impression.

The Alien and Sedition Acts helped usher in a wave of limited government, of pulling in of the reins of expansive government action for the next 60 years. The improper course set in the latest portion of the 18th century was corrected early in the 19th and then did not waver even by the numerous significant events of the first half of the 1800's.

A tripling of land size, a doubling of the number of States, an eight-fold increase in population, and two wars (1812 and Mexican) did not significantly alter the path of the government of the United States away from the (corrected course of a) proper constitutional foundation.

	1790	1860
United States Gross Land Mass in Square Miles:[15]	888,811	3,022,387
Number of States in the Union	13	33
Population:[16]	3,929,214	31,443,321

It took the War Between the States, with the deaths of 364,511[17] Union soldiers (and the death of a similar number of Confederate soldiers) and at the cost of $13 billion[18] (North only), to break the strong-hold of limited government to change the direction and future course of the United States *away* from their proper strict constitutional underpinnings.

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15. *Historical Statistics of the United States, Colonial Times to 1970*, 93rd Congress, 1st Session, House Document No. 93-78, U.S. Department of Commerce, Bureau of the Census, Page 428, Chart Series J - 2.

16. Ibid., Page 8. Chart Series A - 2.

17. Ibid, Page 1140. Chart Series Y879.

18. Ibid, Page 1140. Chart Series Y 849. Direct War costs of $3.2 billion; Interest costs of $1.172 billion; and $8.58 billion in Veteran's Benefits.

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