AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 4: The Early National Era – Powers of the National Government

House Report of a Select Committee on the Petitions Praying for a Repeal of the Alien and Sedition Laws (1799)[1]

The Alien and Sedition Acts of 1798 were deeply controversial. The Jeffersonians reacted with alarm to the Federalist measure. The Sedition Act created a federal criminal offense of seditious libel, which threatened fines and imprisonment for anyone who said or published anything that tended to bring the federal government or its officers into disrepute. Similar offenses existed in England, and several of the states recognized such a crime after the Revolution. The Sedition Act was not only partisan in its motivations and application, however, it was also seen as running afoul of both the enumeration of powers and the First Amendment. The Jeffersonian Republicans made use of the political institutions available to them to protest the Act. Those protests included petitions to Congress asking that it repeal the measure. The Federalists responded with a House committee report defending the constitutionality and policy of the 1798 statutes. How do the Federalists understand the freedom of the press? Why is seditious libel not protected? Why does Congress have the authority to prohibit such speech?

. . . .

[A] law to punish false, scandalous, and malicious writings against the Government, with the intent to stir up sedition, is a law necessary for carrying into effect the power vested by the Constitution in the Government of the United States, and in the departments and officers thereof, and, consequently, such a law as Congress may pass; because the direct tendency of such writings is to obstruct the acts of the Government by exciting opposition to them, to endanger its existence by rendering it odious and contemptible in the eyes of the people, and to produce seditious combinations against the laws, the power to punish which has never been questioned; because it would be manifestly absurd to suppose that a Government might punish sedition, and yet be void of power to prevent it by punishing those acts which plainly and necessarily lead to it; and, because, under the general power to make all laws proper and necessary for carrying into effect the powers vested by the Constitution in the Government of the United States, Congress has passed many laws for which no express provision can be found in the Constitution, and the constitutionality of which has never been questioned, such as the first section of the act now under consideration for punishing seditious combinations . . . .

. . . [T]he liberty of the press consists not in a license for every man to publish what he pleases without being liable for punishment, if he should abuse this license to the injury of others, but in a permission to publish, without previous restraint, whatever he may think proper, being answerable to the public and individuals, for any abuse of this permission to their prejudice. In like manner, as the liberty speech does not authorize a man to speak malicious slanders against his neighbor, nor the liberty of action justify him in going, by violence, into another man's house, or in assaulting any person whom he may meet in the streets. In the several States the liberty of the press has always been understood in this manner, and no other. . . .

. . . .

[T]he act in question cannot be unconstitutional, because it makes nothing penal that was not penal before, and gives no new powers to the court, but is merely declaratory of the common law, and useful for rendering that law more generally known and more easily understood. This cannot be denied,

[1] *Annals of Congress*, 5th Cong., 3rd sess. (February 25, 1799), 2986–2990.

if it be admitted, as it must be, that false, scandalous, and malicious libels against the Government of the country, published with intent to do mischief, are punishable by the common law; for, by the 2nd of the 3rd article of the Constitution, the judicial power of the United States is expressly extended to all offenses arising under the Constitution. By the Constitution, the Government of the United States is established, for many important objects, as the Government of the country; and libels against that Government, therefore, are offences arising under the Constitution, and, consequently, are punishable at common law by the courts of the United States. . . .

. . . [H]ad the Constitution intended to prohibit Congress from legislating at all on the subject of the press, which is the construction whereon the objections to this law are founded, it would have used the same expressions as in that part of the clause which relates to religion and religious laws; whereas, the words are wholly different: "Congress," says the Constitution, (amendment 3rd,) "shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or the press." Here it is manifest that the Constitution intended to prohibit Congress from legislating on all the subjects of religious establishments, and the prohibition is made in the most express terms. Had the same intention prevailed respecting the press, the same expressions would have been used, and Congress would have been "prohibited from passing a law respecting the press." They are not, however, "prohibited" from legislating at all on the subject, but merely from abridging the liberty of the press. . . .