



# The Sedition Act of 1798 and the East-West Political Divide in Vermont

*Vermonters Matthew Lyon was the target of the very first prosecution under the Sedition Act. This initial foray against dissenters is the more remarkable in that its target was a sitting congressman. It is less surprising that this congressman represented the inhabitants of western Vermont.*

By ROBERT D. RACHLIN

**T**he Sedition Act of 1798 was the first, although not the last, U.S. legislation criminalizing speech critical of the government. Born in the wake of widespread hysteria over the prospect of war with France, the law had a mercifully short life, expiring with the presidential term of John Adams in 1801. Aimed chiefly at Republican opponents of the Federalist government, the Sedition Act had a mixed reception in Vermont, bisected both politically and geographically by the Green Mountains.

## BACKGROUND

Politics in the 1790s was a rough affair, one party demonizing and challenging the patriotism of the other, casting about for scandals. The implacable battles between the Federalists and the Republicans were conducted largely, but not exclusively, along regional lines. The mercantile

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North was resolutely Federalist; the agrarian South leaned sharply toward Jeffersonian Republicanism. The five New England states (Maine was not admitted until 1820) were Federalist fortresses, buttressing Massachusetts-born President John Adams. In the Fifth Congress (1797–1799) every New England senator and representative was a Federalist, with a single exception: Matthew Lyon, one of two Vermont representatives, was the region's lone Republican in Congress.

The lopsided Federalist majority in the Senate extended south to the Mason-Dixon Line. The senators from every state to the north of that divide were Federalists. To the south, every senator, except Federalist Humphrey Marshall of Kentucky, was Republican, also called "Democratic-Republican." In the House, Republicans and Federalists were more broadly represented both in the north and the south. In New York, for example, four of ten representatives were Republicans. The robust mercantile and financial interests of the North aligned with the Federalists, while the agrarian South felt threatened by these interests, particularly as Treasury Secretary Alexander Hamilton pressed for the creation of a consolidated national financial structure seen by many as favoring the moneyed commercial interests of the North. Sectional animosities were further aroused over slavery.

In Vermont, the political and philosophical antagonisms between settlers east and west of the mountains preëxisted statehood. Bennington, the first chartered town, was west of the mountains. But newcomers had earlier drifted up in the east, chiefly from Connecticut,<sup>1</sup> and were imbued with the Calvinism and political conservatism prevailing in their former colonies.<sup>2</sup> The independent state of Vermont, established in 1777, was initially and for a few months thereafter called "New Connecticut."<sup>3</sup> In the Connecticut River valley "orthodox Congregationalism was firmly entrenched."<sup>4</sup> While eastern Vermonters imported Federalism, Calvinist religion, and respect for authority in their train, a large number of those who settled west of the Greens were of a different cast. Ethan Allen, Ira Allen, and Matthew Lyon, who purchased and occupied lands granted by New Hampshire Governor Benning Wentworth in disregard of prior New York claims, were among these westerners. Unlike their brethren on the other side of the mountains, these western settlers were dyed in an anti-authoritarian, free-thinking hue. Religious dissenters from southern New England and participants in Shays's Rebellion in Massachusetts fled to the wild regions centered around Bennington. As one contemporary observer noted, "In the place Religion is much out of style."<sup>5</sup> Ailene Austin has neatly, if with a broad brush, characterized the philosophical fault line of the Green Mountains as a boundary between the ideas of Jean-Jacques Rousseau and those of Edmund Burke.<sup>6</sup>

Vermonters' possession of the new lands was soon under attack. New York vigorously contested the "New Hampshire Grants," asserting title to all the land east to the Connecticut River under a 1664 royal grant of Charles II to the Duke of York. Persistent, often violent, attempts by New York officials to evict the occupants of the New Hampshire Grants from their lands and homes and the equally determined armed resistance of the New Hampshire grantees, especially in the west, created a sustained state of perilous and insecure affairs for the settlers. From this precarious environment Ethan Allen's Green Mountain Boys emerged. The Grant lands west of the Green Mountains became an incubator of republican radicalism. Quoting the *American Mercury* of December 31, 1792, William Alexander Robinson writes, "'Itinerant Jacobins' were said to be holding forth in the barrooms of Rhode Island and Vermont and endeavoring to stir up opposition."<sup>7</sup> Although the settlers east of the Greens were as subject to the New York claims as those in the west, "the backbone of resistance to the 'Yorkers' arose [west of the mountains] while the eastern counties were relatively supine."<sup>8</sup> Matthew Lyon's attitude toward Vermonters east of the Green Mountains can be inferred from his characteristic reference to the "aristocrats over the mountain."<sup>9</sup>

The rebelliousness of the westerners was exacerbated by an uneasy relationship with lawyers, most of whom identified with the authoritarian, Federalist politicians. The ease with which lawyers settled into the ruling cadres of Vermont was a bone of contention with the westerners, as voiced by Lyon. In his *Farmer's Library*<sup>10</sup> he expounded "Twelve Reasons Against a free People's employing Practitioners in the Law, as Legislators." The insecurity of land speculators, such as Lyon himself, was reflected in the assertion that "these professional gentlemen are inclined to stand up for the claims of landlords, landjockies, and overgrown landjobbers, in preference to the poorer sort of people." The powerful Federalist tandem of Isaac Tichenor—governor of Vermont in the late 1790s—and Nathaniel Chipman—U.S. senator during the same period and a former federal district judge—were both trained lawyers, as was Charles Marsh, the U.S. district attorney who later prosecuted Lyon under the Sedition Act. The distribution of political loyalties between eastern and western Vermont was, of course, not unvarying. Both Chipman and Tichenor resided west of the mountains.

The French Revolution, beginning in 1789, further polarized the population. Thomas Jefferson saw the upheaval across the ocean as a validation of the principles of the American Revolution and the Declaration of Independence. Among the Federalists, the French tumult was widely viewed as a dark precursor of anarchy, class leveling, and atheism. The Federalists and Republicans responded to the French upheaval with

mutual demonization. To Jefferson and his followers, the Federalists were partisans of England, upholders of class distinction, and crypto-monarchists. To Adams and the Federalists, the Republicans were unruly atheists and Jacobins bent on overturning the established order and substituting mob rule for the orderly governance furnished by natural aristocrats. The words “democrat” and “democracy” were terms of reproach in the mouths and pens of Federalists. As the French Revolution became increasingly bloody and the guillotine evolved into the chief instrument of France’s domestic politics, the Federalists acquired useful ammunition against the Republicans. When the French, incited by American commercial ties with England affirmed in the Jay Treaty of 1794, began to attack American merchant ships and contemptuously snubbed American diplomatic missions to the new government, popular belligerence toward the former ally erupted, giving Federalists a warrant to tar the Jeffersonian Republicans as conspirators with the common enemy.

Political flame throwing stirred up by the events in France were reflected on a smaller scale within the confines of Vermont in its first years as the fourteenth state of the Union, having been admitted in 1791 after protracted haggling with Congress. From an early date, the geographic division between eastern and western Vermont became a fact of political salience.<sup>11</sup> Quite naturally, the towns to the west of the Green Mountains, populated by inhabitants of an independent, free-thinking spirit tended Republican; religious and social traditionalists in the east gravitated naturally to the Federalists.<sup>12</sup> Especially after the end of President Washington’s second term of office in 1797 and the election of John Adams, the Federalist east began to face off more acrimoniously with the Republican west. This political division persisted far into the future. The impulse toward unity in the teeth of political enmity induced the General Assembly to meet in alternate years east and west of the mountains, a practice that continued until Montpelier was established as the state capital in 1808. The so-called “mountain rule,” by which recruitment of major state offices alternated between residents of the east and west, continued until the election of Patrick J. Leahy as U.S. senator in 1974.<sup>13</sup>

The conflict with France during the Adams years ignited the first dramatic debate about the extent and limits of federal executive power and a corresponding impact on civil liberties. With much of the population in a near panic over the prospect of war with France, the Federalist government, confronting the opposition of the Republican Party, responded with the Alien and Sedition Acts of 1798.<sup>14</sup> Passed by Congress in four separate enactments between June 18 and July 14, 1798, the

*John Adams. Robust criticism of President Adams led to indictments of Matthew Lyon and journalist-publisher Anthony Haswell under the Sedition Act.*



Alien Acts greatly expanded the power of the president to detain and deport 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 unreasonable or secret machinations against the government thereof.” The requirements for naturalization were significantly increased. Where formerly an alien had to reside within the United States for five years before naturalization,<sup>15</sup> the first of the four acts increased the residency period to fourteen years. The Sedition Act, enacted last, criminalized speech and writings, a direct challenge to the First Amendment.

John Adams, in an 1813 letter to Thomas Jefferson, asserted that he had never once invoked the “Alien Law.”<sup>16</sup> He could not make this exculpatory claim with respect to the companion Sedition Act,<sup>17</sup> which brought immediate and oppressive constraints to bear on citizens generally and on newspaper publishers and the opposition Republican Party in particular. The political advantage gained by equating opposition with treason was not lost on the party in power. Federalist Senator Theodore Sedgwick from Massachusetts wrote of the snub of American emissaries by France: “It will afford a glorious opportunity to destroy faction. Improve it.”<sup>18</sup> Identification of the Republican opposition with the French furnished a pretext for the Federalists to treat the opposition as the “internal foe.”<sup>19</sup> The Act decreed imprisonment from five months to two years and a fine of up to \$5,000, equivalent to over

\$63,000 in 2010 money, for any persons who “shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States” or “to impede the operation of any law of the United States.” Whoever “shall write, print, utter<sup>20</sup> or publish, or shall cause or procure to be written, printed, uttered or published” any “false, scandalous and malicious writing against the government” with intent to bring the president or Congress “into contempt or disrepute” was subject to two years’ imprisonment and a fine of up to two thousand dollars. Writing in 1902, Woodrow Wilson, who later presided over the Espionage Act of 1917,<sup>21</sup> reflected that “the Sedition Act cut perilously near the root of freedom of speech and of the press. There was no telling where such exercises of power would stop. Their only limitations and safeguards lay in the temper and good sense of the President and the Attorney General.”<sup>22</sup> A generation later, historian Richard Hofstadter criticized the Sedition Act, commenting that “the language . . . was vague enough to make a man criminally liable for almost any criticism of the government.”<sup>23</sup>

It is plain from the charges brought under the Sedition Act that the target of enforcement was the opposition Republican Party as much as actual or supposed French-inspired machinations. Any criticism of the government could be viewed as seditious within the broad reach of the Act’s language, dependent only “on the temper and good sense” of the enforcement authorities. Such “temper and good sense” was not always in abundant supply.

By its terms, the Sedition Act was to expire on March 3, 1801, the last day of President Adams’s current term. This provision, introduced by Representative George Dent of Maryland, was approved by the House without debate.<sup>24</sup> Final House passage of the Sedition Act on July 10, 1798, following extended and passionate debate, was by a close vote, 44 to 41.<sup>25</sup> While it is unclear why the act was to end with President Adams’s first term, it is possible that the limitation resulted from a compromise by the Federalists to ensure the slim majority needed to pass the bill, which was approved by the president four days later.<sup>26</sup> Matthew Lyon, Vermont’s lone Republican congressman, who was later to become a prominent victim of that law, voted against it. The vote of Vermont’s other representative, Federalist Lewis R. Morris, is not recorded, although his sentiments in favor of the act are not hard to divine.<sup>27</sup> Vermont’s two senators, Federalists Nathaniel Chipman and Elijah Paine, voted for the bill.

As might have been anticipated, enactment of the Sedition Act provoked energetic and bitter debate among state legislatures, newspapers, and the population at large.<sup>28</sup> Two state legislatures, Kentucky and

Virginia, passed resolutions condemning it.<sup>29</sup> Vermont newspapers divided along partisan lines. The outspoken *Vermont Gazette* (Bennington), published by Anthony Haswell, was in a small minority of Republican newspapers in the state. Haswell eventually became one of two<sup>30</sup> Vermonters prosecuted under the Sedition Act. Public outrage, by no means unanimous, erupted around the country.<sup>31</sup> “Liberty poles”<sup>32</sup> were erected in many states as a challenge to the Act and to the federal government, including one at Wallingford, Vermont,<sup>33</sup> Congressman Lyon’s first town of residence in the former New Hampshire Grants.

The clash between civil liberties and a perceived national security imperative, whenever it occurs in the United States, typically excites rhetorical clustering around extreme positions. The Sedition Act and its reaction were no exception. “Fear of ‘Jacobinism,’ associated with the French Revolution, furnished the chief support for the Alien and Sedition Acts.”<sup>34</sup> In Vermont as well as elsewhere, accusations of Jacobinism were hurled against opponents of the acts.<sup>35</sup> On rare occasions, the epithet was used against the Federalists themselves.<sup>36</sup> The Sedition Act proved a useful tool in Federalist attempts to squelch the Republican, i.e., Jeffersonian, opposition.

The resolutions passed by Virginia and Kentucky opposing the Sedition Act prompted rebuttals from other states. The state legislatures of Maryland, Pennsylvania, Delaware, Connecticut, New York, and Vermont all passed resolutions opposing the Virginia and Kentucky initiatives, which had been chiefly authored by James Madison and Thomas Jefferson, respectively. Although at least one state (Connecticut) explicitly approved of the Alien and Sedition Acts,<sup>37</sup> most states condemning the Virginia and Kentucky Resolutions grounded their opposition in a rejection of the broader issue of the nullification of federal enactments on constitutional grounds by state legislatures.<sup>38</sup> Vermont submitted a detailed minority report in opposition to the Alien and Sedition Acts, attacking the acts themselves and defending in limited terms the nullification prerogative of the states.<sup>39</sup>

The nullification prerogative of the states was not the only framing issue aroused by the Alien and Sedition Acts and the state responses to them. Enforcement of the Sedition Act raised another underlying question: Was the common law of England, which recognized the crime of seditious libel, automatically incorporated into the law of the United States? This issue was at the center of the 1799 prosecution in Massachusetts of Abijah Adams, a bookkeeper for the anti-federalist *Boston Independent Chronicle*.<sup>40</sup>

Abijah Adams was prosecuted, not under the Sedition Act, but under Massachusetts law, incorporating the English common law of seditious

libel. In certain respects, the Sedition Act was more lenient than common law libel. Section 3 of the act provided that the truth of the publication would constitute a defense,<sup>41</sup> which comports with modern American libel law.<sup>42</sup> Under the now-superseded English common law, “it is immaterial . . . whether the matter of it be true or false, since the provocation, and not the falsity, is the thing to be punished criminally.”<sup>43</sup> Similarly, punishment of the publisher of defamatory statements was not, at common law, seen as an untoward restriction of press freedom: “[T]he liberty of the press, properly understood, is by no means infringed or violated [by punishment for libel]. The liberty of the press is indeed essential to the nature of a free state: but this consists in laying no *previous* restraints upon publications, and not in freedom from censure for criminal matter when published.”<sup>44</sup>

The contrasting defensive value of truth in the Sedition Act and under common law libel afforded the Act’s defenders an argument that the Sedition Act, far from being an instrument of oppression, was, in fact, a palliation of the more rigorous common law. Of course, this did not settle the question whether the common law of England was or was not imported with the original settlers into the law of Massachusetts or of the United States. In the event, Abijah Adams was convicted, fined \$500 (about \$6,300 in 2010 currency) and sentenced to serve thirty days in the county jail.

#### RESPONSE OF THE VERMONT LEGISLATURE

In 1798–1799, Vermont, particularly the eastern half of the state, was firmly in Federalist hands, as were the northern states generally. Federalist Governor Isaac Tichenor served until 1807, politically surviving the “Jefferson Revolution” of 1800. Federalists dominated but did not monopolize the Vermont legislature in the years 1798 to 1801. This is evident from the responses of the majority and minority of the legislature to the Virginia and Kentucky Resolutions. The two contrasting responses and the support each received within the assembly reflected the sharp partisan division of opinion within Vermont, a division likely exacerbated by the prosecution, conviction, and imprisonment of Vermont Congressman Matthew Lyon the preceding fall. The Lyon case is discussed below.

The Vermont majority resolution, as it pertains to the Sedition Act, can be summarized as making four chief points: (1) State nullification is rejected; (2) The “compact” theory of the Union is rejected; (3) Freedom of speech and of the press is subject to limitations of sedition and defamation; and (4) Vermont has itself sanctioned such limitations in its own legislation.

The Kentucky and Virginia Resolutions and those of the states that replied in opposition raised an issue even more inflammatory than the incursions of the Alien and Sedition Acts on personal liberty: the question of nullification. Did the states as parties to the compact creating the Union have the power to invalidate laws enacted by the national Congress? This question turned on interpretation of the Tenth Amendment to the Constitution: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

The competency of the individual states to nullify congressional acts that they deemed unconstitutional became intertwined with the pervasive controversy over “states’ rights” that culminated in the Civil War and persists to this day. The attempt by South Carolina in 1832 to declare a national tariff law unconstitutional and its refusal to enforce it within its boundaries led President Andrew Jackson to threaten the use of military force against the recalcitrant state. A compromise settled that dispute; but in 1850, the Vermont legislature excited a national uproar and general disapproval by its enactment of the Habeas Corpus Law,<sup>45</sup> which, in defiance of the federal fugitive slave laws, imposed on state’s attorneys the duty to protect fugitive slaves. Vermont, the first state to outlaw slavery in its constitution,<sup>46</sup> had a history of antislavery legislation predating 1850.<sup>47</sup> The Vermont law was justly seen as an attempt to nullify the Compromise of 1850, signed by President Millard Fillmore, which greatly strengthened existing fugitive slave laws.<sup>48</sup>

Although Vermont, in practice if not in theory, would in 1850 enact legislation that could be seen as supporting nullification in response to a strong moral imperative, its reaction in 1799 to the Kentucky and Virginia Resolutions was more cautious. The majority’s response to the Virginia Resolution was brief and to the point: “*Resolved*: That the General Assembly of the state of Vermont do highly disapprove of the resolutions of the General Assembly of the state of Virginia, as being unconstitutional in their nature, and dangerous in their tendency. It belongs not to *State Legislature[s]* to decide on the constitutionality of laws made by the general government; this power being exclusively vested in the *Judiciary Courts of the Union*.”<sup>49</sup> This resolution was approved by a vote of 104–52 on October 30, 1799.

The more detailed majority response to the Kentucky Resolution both rejected the principle of nullification and asserted the merits of the Alien and Sedition Acts. Quoting from the Kentucky Resolution (“That the states constituted the general government, and that each state as party to the compact, has an equal right to judge for itself as well of infractions of the constitution, as of the mode and nature of redress”), the

Vermont majority did not equivocate: “This cannot be true.”<sup>50</sup> The majority acknowledged that the “old confederation” was indeed formed by the state legislatures, “but the present constitution of the United States was derived from a higher authority. The people of the United States formed the federal constitution, and not the states, or their Legislatures.” The state legislatures could therefore propose constitutional amendments, but had no power “to dictate or control the general government.” The majority then advanced a slippery slope argument: If state legislatures could invalidate these particular acts, they could at their discretion approve or reject all acts of Congress. “Would this not defeat the grand design of our Union?” In short, the Vermont majority rejected the “compact” view of the Union.

The majority proceeded to a defense of the Sedition Act on its merits, beginning with a logically dubious argument: Vermont could not consider the Sedition Act unconstitutional because Vermont itself had enacted sedition laws of long standing, providing severer penalties than the federal Sedition Act. This may have constituted a practical impediment to a declaration by Vermont that the Sedition Act was unconstitutional, but it hardly equated to a theoretical justification of the law. Both the federal and Vermont acts were arguably unconstitutional, especially as the majority acknowledged that in its own bill of rights, freedom of speech and of the press had been declared “unalienable.” In its approval of the Sedition Act, the majority gave voice to its view of freedom’s limitations as reflected in the state’s own sedition law: “[T]he railer against the civil magistrate, and the blasphemer of his maker are exposed to grievous punishment. And no one has been heard to complain that these laws infringe our state constitution. Our state laws also protect the citizen in his good name; and if the slanderer publish his libel, he is not in a criminal prosecution, indulged, as by the act of Congress, in giving the truth of the facts as exculpatory evidence.”<sup>51</sup>

Vermont, like Massachusetts, adhered to the common-law standard of defamation,<sup>52</sup> which, as seen in the Abijah Adams prosecution, did not admit truth as a defense. The majority thus indulged another argument of questionable force: If the Sedition law is bad, our own is much worse; therefore, we have no quarrel with the former.

We can pass over the balance of the majority resolution, which dealt with the Alien Laws. However, the majority’s parting shot warrants a comment, as it rested on a manifest, perhaps deliberate, misconstruction of a word having multiple meanings: “In your last resolution [i.e., the last section of the Kentucky Resolution], you say, ‘That confidence is everywhere the parent of despotism, free government is founded in jealousy, and not in confidence.’ This is a sentiment palpably erroneous,

and hostile to the social nature of man: the experience of ages evinced [*sic*] the reverse is true, and that jealousy is the meanest passion of narrow minds, and tends to despotism.”

While “jealousy” had even then the modern meaning of “the state of mind arising from the suspicion, apprehension, or knowledge of rivalry” given by the Oxford English Dictionary, that work also furnishes the sense that was clearly intended by the Kentucky legislature: “Solicitude or anxiety for the preservation or well-being of something; vigilance in guarding a possession from loss or damage.”<sup>53</sup> Jefferson, the patron and chief draftsman of the Kentucky Resolution, himself used the word in the sense plainly intended by the Kentuckians, when in his first inaugural address he referred to “a jealous care of the right of election by the people.”<sup>54</sup>

Significantly, no mention is made in the majority resolution of the external environment that was the ground asserted for the Alien and Sedition Acts: the developing threat of war with France. The responses of other states to the Kentucky and Virginia Resolutions rested mainly on the nullification issue. The Vermont majority resolution was not content to reject nullification in direct terms, but went beyond other states in defending limitations on freedom of speech and the press. The majority resolution in response to the Kentucky Resolution passed by almost the same margin as the response to the Virginians: 101–50.

The minority produced and recorded its own response.<sup>55</sup> If, given the recent imprisonment of Lyon under the Sedition Act, citizens in the anti-Federalist bastions of western Vermont were expecting a robust condemnation of the act’s curtailments of the press and free speech, they were disappointed. The minority explicitly refrained from any assessment of the constitutionality of the act, but recorded its concurrence with John Marshall that the act “was calculated to create *unnecessarily*, discontents and jealousies, at a time when our very existence as a nation may depend on our union” (italics in the minority report original). Thus, the minority memorialized its dissent from the act on its merits without providing more than a broad, nonspecific reason for its opinion. The minority then went on to devote substantial ink to its objections to the Alien Acts, which we pass over here.

The minority did not shrink from addressing the issue of nullification, even if it trod a fine line, first stating:

For as it appears clearly by the twelfth [tenth] article of the amendments to the constitution, as has been before observed, that the states individually compose one of the parties to the federal compact or constitution, it does of course follow, that each state must have an interest in that constitution being pure and inviolate.

It later carefully added a prudent disclaimer:

Let it not be supposed, that in advocating the power of each state to decide on the constitutionality of some laws of the union, we mean to extend that right to any laws which do not infringe on the powers reserved to the states by the twelfth [tenth] article of the amendments to the constitution. We cannot therefore, be charged with an intent to justify an opposition, in any manner or form whatever, to the operation of any act of the union. That we conceive to be rebellion, punishable by the courts of the United States.

Adhering to the “compact” view of the Union repudiated by the majority, the minority carried the logic to its rational conclusion: States have the power and privilege of passing on acts of the general government that infringe on the terms of the compact, one of which was the amendment reserving undelegated powers to the states. The minority did not address the slippery slope argument of the majority; it contented itself with an assurance that it saw only those acts of Congress that infringed upon the powers of the “compact” members as vulnerable to nullification by state legislatures. It offered no guidance on how such susceptible enactments were to be identified. Rhetorically, the majority occupied the stronger redoubt on this issue.

The minority did prove itself better lexicographers than the majority when it came to the word “jealousy”: “Whether jealousy, in a political sense, be a virtue or a vice, depends, we conceive, on the object by which it is produced, and the extent to which it is carried. As a proof of this, we will . . . quote an admonition of our illustrious Washington, in his farewell address to his fellow-citizens. ‘Against the insidious wiles of foreign influence (says he) I conjure you to believe me fellow-citizens, the jealousy of a free people ought constantly to be awake.’”

The Alien Acts aside, the chief arguments of the minority were: (1) The Sedition Act is vexatious for reasons barely set forth; (2) The Union is founded on a compact of states; and (3) States have the power of nullification when the compact is violated, an eventuality indistinctly described.

The diffidence of the minority about the merits of the Sedition Act is surprising from one point of view, given the incarceration under it of one of Vermont’s two congressmen. From another point of view, its restraint is understandable. It must have felt a concern not to seem indifferent to the agitated state of affairs between the United States and France. By avoiding this issue, the minority members preemptively parried any imputation of an unpatriotic spirit. Such caution was foreign to the disposition of Matthew Lyon.

## ENFORCEMENT IN VERMONT

Historians disagree about the number of prosecutions that were instituted under the Sedition Act. Frank Maloy Anderson estimates that about twenty-four or twenty-five people were arrested nationwide under the Sedition Act, adding that “only 10, or possibly 11, cases came to trial” and that ten cases ended in convictions.<sup>56</sup> John Ferling gives the number of indictments as seventeen.<sup>57</sup> James Morton Smith reports fourteen.<sup>58</sup> What is indisputable is that Vermont accounted for a disproportionate number of the prosecutions. Although Vermont in 1800 had about 3% of the national population, it accounted for 18% to 30% of the Sedition Act prosecutions, depending on whose total one accepts. Three Vermonters were indicted under the Sedition Act, if one includes a “Doctor Shaw,” who, according to a dispatch from Windsor, Vermont, was acquitted.<sup>59</sup> It is also indisputable that a Vermonter was the target of the very first prosecution under the Act. This initial foray against dissenters is the more remarkable in that its target was a sitting congressman. It is less surprising that this congressman represented the inhabitants of western Vermont.

*Prosecution of Matthew Lyon*

Born in 1749 in an Ireland tormented by the oppressive, confiscatory policies of England, Matthew Lyon emigrated to the United States at an age between thirteen and fifteen as a “redemptionist,” one who barter his service in return for ship passage and board.<sup>60</sup> Upon arrival in the United States, he was indentured to a tradesman who paid the ship captain Lyon’s passage. Later, he was traded to another master in return for a pair of stags, prompting Lyon throughout his life to make oath “by the bulls that redamed [redeemed] me.”

His early American domicile was in Litchfield County, Connecticut, birthplace of Ethan Allen. His precise movements are subject to conflicting reports. An old history of Woodbury, Connecticut, has him first indentured in that town and later sold to Hugh Hanna of Litchfield for a pair of stags worth about £12.<sup>61</sup> The ambitious Lyon either bought his freedom or fled from his master. In 1773, he took advantage of the cheap land for sale in the New Hampshire Grants, purchasing property in Wallingford, Vermont.<sup>62</sup> Moving there in 1774, Lyon quickly embroiled himself in the ongoing conflict with the “Yorkers” over rightful title to the land. Falling in with the Green Mountain Boys, he joined Ethan Allen (and Benedict Arnold) in the storming of Fort Ticonderoga on May 10, 1775. In 1777 or 1778 he moved to Arlington, Vermont, where he was employed as a laborer by Thomas Chittenden,<sup>63</sup>

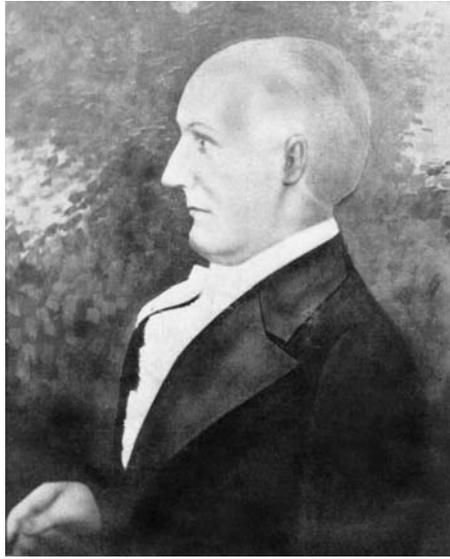
the first governor of the self-proclaimed State of Vermont. After the death in April 1784 of Lyon's first wife, a cousin<sup>64</sup> of Ethan Allen, he soon married Chittenden's daughter, Beulah. The new family connection with the powerful Chittenden,<sup>65</sup> coupled with the common cause he made with the militant Allens, likely paved Lyon's path to the public offices he later held in the fledgling state of Vermont, including among others town representative of Arlington, deputy secretary of the governor and council, clerk of the assembly, and assistant to Treasurer Ira Allen.<sup>66</sup>

Lyon's military exploits included soldiering during the Revolutionary War. As a lieutenant in the Northern Army under the command of General Horatio Lloyd Gates, Lyon in 1776 was put in command of a detachment assigned to a remote, exposed position in Jericho, Vermont. Seeing themselves defenseless against an anticipated Indian attack in late spring 1777, Lyon's troops, with the tacit encouragement of other officers, mutinied and fled their post. Lyon repaired to Ticonderoga to report the action of his troops to General Arthur St. Clair, who was preparing the evacuation of the fort in the face of General Burgoyne's advance from the north. Lyon, along with his men, was accused of cowardice, tried by court-martial, and cashiered from the service, despite his protest that he had been powerless to prevent the flight of his troops.<sup>67</sup> Although Lyon was eventually restored to military duty and attained the rank of colonel, the Jericho events and his consequent disgrace dogged him throughout his later career. It was rumored that upon his ejection from the army he had been presented with a wooden sword. Taunts about the alleged wooden sword followed him.

Lyon moved from Arlington to Fair Haven, Vermont, in 1783, where he built several mills and a forge, and established himself as the "father" of the town. Ten years later, he turned to printing and produced a newspaper, *The Farmer's Library*, which became only the fourth newspaper functioning in the state at that time.

His experience of the "Whiteboy" rebellion<sup>68</sup> in Ireland (1761–1765) against the forcible dispossession of small farmers must have shaped his character, especially as his father was said to have been hanged by the British for his part in it. Lyon became the iconic western Vermonter, furnished with an eloquence and audacity that transformed him into an often reckless opponent of everything he perceived as tyranny. His character and temperament fit in well with the Allens, who had put their resolutely independent-minded stamp on Vermont west of the mountains. Not surprisingly, Lyon's political sympathies rested with the Jefferson Republicans, and he fiercely opposed the Federalists, placing him in continual conflict with the dominant Federalist governing class in Vermont.

*Matthew Lyon, a sitting member of Congress from Vermont, was the first victim of the Sedition Act. From a portrait owned by Lyon's daughter; artist and date unknown.*



Lyon went from one minority setting to another. After serving several terms in the Vermont legislature, he was elected to the Federalist-dominated U.S. House of Representatives from western Vermont in 1797. He made few friends in Congress when, with his usual contempt for pomp and circumstance, he refused to participate in the customary reverential parade tendered to President Adams following his address to that body. On January 30, 1798, after repeated jibes about the “wooden sword” by Connecticut Federalist representative Roger Griswold, Lyon responded at last by spitting in Griswold’s face. The Federalists seized on this opportunity to rid themselves of a vociferous opponent, by moving Lyon’s expulsion from the House. Extensive debate consumed most of the following two weeks.<sup>69</sup> In the end, the motion gained a majority but fell short of the two-thirds required. Three weeks after the spitting incident, Griswold advanced on a preoccupied Lyon and proceeded to pummel him with a cane. Lyon finally gained his footing and engaged Griswold with the help of a pair of fire tongs snatched from the chamber fireplace. The Speaker of the House, Federalist Jonathan Dayton, looked on in amusement as Lyon and Griswold thrashed each other until some members finally dragged Griswold by the legs off Lyon. Naturally, this occasioned further prolonged debate.<sup>70</sup> A resolution to expel both members failed overwhelmingly.

Lyon sought reelection to the House in 1798. When the *Rutland Herald* refused to publish communications favoring his reelection,



“Congressional Pugilists,” a contemporary cartoon of Matthew Lyon (holding the tongs) and Roger Griswold settling scores on the floor of the U.S. House of Representatives on February 15, 1798.

Lyon took up his own cause by founding a semimonthly magazine to publish his own views where other publishers refused. *The Scourge of Aristocracy and Repository of Important Political Truths* was furiously anti-Federalist.

Deprecated for railing against what he saw as the monarchical pomps with which Adams surrounded himself, widely despised for his outspoken republican sentiments, and disparaged by nativists for his humble Irish ancestry, Lyon presented an irresistible target of Federalist vengeance once a suitable weapon was at hand. On October 5, 1798,<sup>71</sup> Lyon was indicted under the Sedition Act, the first test of this law. The three-count indictment recited a letter he had written to *Spooner’s Vermont Journal*<sup>72</sup> excoriating the “ridiculous pomp, foolish adulation, [and] selfish avarice” which he clearly aimed at President Adams. A second count charged Lyon with procuring the publication of a letter supposedly from a “diplomatic character in France,”<sup>73</sup> referring to the “bullying speech of your President” and wondering why the House and Senate hadn’t responded to it with “an order to send him to a mad house.” The third

count simply accused Lyon of “assisting, counseling, aiding, and abetting the publication” of the letter cited in the second count.

Trial in the federal circuit court commenced on October 7, 1798, in Vergennes, with Supreme Court Justice William Paterson presiding, assisted by Samuel Hitchcock, who had succeeded Nathaniel Chipman as judge of the United States District Court for the District of Vermont—both staunch Federalists. With a Federalist district attorney and marshal, the outcome was predictable. In the politically charged environment, Lyon served as his own attorney. It must have been next to impossible to find a lawyer willing to defend him, as the lawyer himself could well make utterances in the course of Lyon’s defense that would themselves be deemed seditious under the sweeping language of the act.

Lyon was not without defenses. He urged, first of all, that the Sedition Act was unconstitutional, a not unreasonable position in light of the breadth of utterance that the act declared criminal. Lyon also argued that the letter from the “diplomatic character” was written before the effective date of the Sedition Act and that he had opposed its publication. Finally, Lyon relied on the clause of the Sedition Act making the truth of the pertinent statements a defense.

At the time of jury arguments, Chief Justice Israel Smith<sup>74</sup> of the Vermont Supreme Court, a former congressman and political rival of Lyon,<sup>75</sup> appeared in court as defense counsel for Lyon, but did not participate in the arguments, claiming that he was unprepared. Why he appeared is unclear, unless it was simply to show support for the accused. Smith’s appearance on October 9, 1798, was two days before the legislature convened, also in Vergennes. In that session, which became known as the “Vergennes Slaughterhouse,”<sup>76</sup> Smith was described as “a man of uncorrupted integrity and virtue,” but one who had undergone a party conversion. The dominant Federalists refused to reelect Smith to the supreme court “on account of his attachment to the republican party.” Many other civil officers suffered the same fate and were replaced by “those who were of the most decided federal principles, and with the avowed design of encouraging the supporters of Mr. Adams, and of checking the progress of democracy.”<sup>77</sup> In light of the gathering anti-Republican storm, Smith’s reluctance to take up the cudgel for Lyon is understandable, if not especially admirable. Following the “Jeffersonian Revolution” of 1800, Smith’s journey to Damascus paid off: He served as a Republican in the U.S. House of Representatives and Senate.<sup>78</sup>

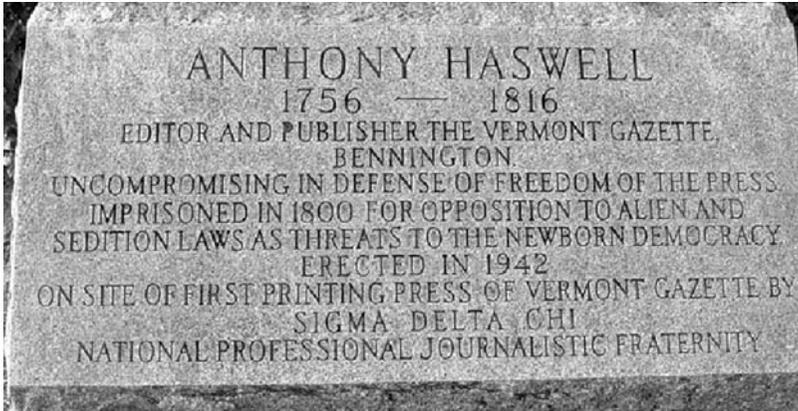
Justice Paterson took full advantage of his jury instructions to all but command the jury to return a guilty verdict, which it dutifully did after one hour’s deliberation.<sup>79</sup> Lyon was sentenced to four months imprisonment, fined one thousand dollars (about \$17,600 in 2009 purchasing

power), and assessed the costs of the prosecution. He was promptly hustled off to the primitive jail in Vergennes, where he was treated with gratuitous severity by the Federalist jailer Jabez Fitch. While in jail, he campaigned successfully for reelection to Congress, the only instance in U.S. history of a successful congressional candidacy conducted from behind bars. With the help of friends his fine was paid, and he promptly returned on a journey to Congress, accompanied along his route by widespread popular adulation.

After completing his term in the House, Lyon moved to Kentucky, where he was also elected to Congress. Although Lyon lived his life in many places—Ireland, Connecticut, Vermont, Kentucky—it was as a Vermonter that he lived most of it and had his greatest impact. His exploits surely contributed to the blunt, fiercely independent, no-nonsense image of the “typical” Vermonter in the popular mind. But it is important to keep in mind that Lyon was a product, not just of Vermont, but of western Vermont, where such qualities shone to a greater extent than among the more tradition-bound easterners. The political divide in Vermont, symbolized by the geographic divide of the Green Mountains, was evident in the presidential election of 1800. Every Vermont county west of the Greens voted for Jefferson; every county east of the Greens voted for Adams. The electoral vote nationally was a tie, obliging Congress to decide the election. Lyon’s vote is claimed to have finally broken the deadlock on the thirty-sixth ballot for president in 1800, resulting in the election of Thomas Jefferson.<sup>80</sup>

#### *Prosecution of Anthony Haswell*

English-born Anthony Haswell (1756–1816) was a multitalented printer and publisher and a redoubtable anti-Federalist. Settling in Bennington, he established the *Vermont Gazette* in 1783 with a partner and the following year built the first paper mill in Vermont. Haswell was an indefatigable pamphleteer and composer of verse, some of which he set to music. Apparently an ardent Freemason, he composed a Masonic hymn.<sup>81</sup> From his pen flowed orations for various occasions, such as the death of George Washington,<sup>82</sup> the anniversary of the Battle of Bennington,<sup>83</sup> and the interment of a military officer.<sup>84</sup> His interests extended to printing manuals for the young, including the quaintly titled *Haswell’s Easy and instructive lessons, for the use of American scholars, just entering the paths of science compiled from the writings of various authors, and interspersed with original essays, on a great variety of subjects*.<sup>85</sup> When publisher after publisher refused to print Ethan Allen’s deistic *Reason: The Only Oracle of Man*, Haswell accepted the commission, which could hardly have enhanced his reputation in the eyes of



*Anthony Haswell's gravestone in the First Congregational Church cemetery, Old Bennington. Photo by the author.*

the Federalists of eastern Vermont or the ruling Federalist power centers. When the majority of the copies, unsold and languishing in Haswell's attic, were destroyed in a fire, the catastrophe was "regarded by the pious as a belated manifestation of Divine displeasure."<sup>86</sup>

Haswell relentlessly hounded President Adams in the pages of the *Vermont Gazette*, portraying him as a monarchist at heart and a squanderer of the nation's treasure. The issue of September 8, 1798, contained an extract from a piece in a New York paper arguing, on the basis of Adams's writings in praise of the British constitution, that the president was in favor of nobility. In the issue of September 1, 1800, four months after he was jailed, Haswell published an article mentioning the president's \$25,000 annual salary, noting that "last year he spent nine months snug in Braintree" and that it was "probable that Mr. Adams will spend the remainder of the fall at the same place. The 25,000 dollars is paid by the sweat of many an industrious brow."

When Matthew Lyon was indicted for his political utterances, Haswell sprang to his defense, although his personal relationship with the abrasive Lyon seems to have been tense.<sup>87</sup> Despairing of raising the \$1,000 fine, without payment of which he would continue to languish in jail, Lyon devised a plan to raise the money by lottery. As prizes, he put up much of his property. Haswell promoted the lottery in the pages of his *Vermont Gazette*. In the issue of January 31, 1799, Haswell printed a message "To the Enemies of Political Persecution in the Western District of Vermont," which was to provide the pretext of his later prosecution for sedition. Whatever Federalist irritation was occasioned by this

article was surely aggravated by the tumultuous reception that Lyon received from the citizenry, prompting some earnest doggerel from Haswell's pen:

Come take the glass and drink his health,  
Who is a friend of Lyon,  
First martyr under federal law  
The junto dared to try on.<sup>88</sup>

Haswell was more careful than Lyon in his fulminations against the Adams administration, but it was widely believed that Haswell too would eventually fall into the trap forged by the Sedition Act.<sup>89</sup> In the October 12, 1798, issue of his newspaper, Haswell reported the arrest of Lyon and added that “we hear that bills [of indictment] were likewise found . . . against the printer of this paper.”

His premonition was correct. Publication of his anxiety was overtaken by the reality. Haswell was arrested on October 8, 1799,<sup>90</sup> with his trial scheduled for the United States Circuit Court sitting in Windsor. Haswell's lone biographer, John Spargo, comments that “by that fact the cards were stacked against him. His conviction was almost assured.” Spargo adds: “It was practically certain that a jury drawn from that [i.e., eastern] side of the mountains, the Federalist stronghold, would be largely composed of the supporters of that party, and party feeling ran too high to permit fairmindedness.”<sup>91</sup> As in Lyon's case, Justice William Paterson presided. But this time, Israel Smith, having been scorned by the ruling Vermont Federalists in the “Vergennes Slaughterhouse,” appeared from the outset as defense counsel.<sup>92</sup>

The indictment was founded on an article that appeared in Haswell's *Vermont Gazette* on January 17, 1799, as Lyon—recently reelected to Congress despite his incarceration—continued as a prisoner in the Vergennes jail “holden by the oppressive hand of usurped power . . . deprived almost of the light of heaven [misquoted in the indictment as “right of reason”],<sup>93</sup> and suffering all the indignities which can be heaped upon him by a hard-hearted savage.” Noting that Lyon could not emerge from prison, even after completion of his term, without \$1,100 in fine and costs, which Haswell termed a “ransom,” the article went on to describe the lottery to raise the needed funds. Haswell concluded: “May we not hope that this amount may answer the desired purpose, and that our representative shall not languish a day in prison for want of money after the measure of Federal vengeance [misquoted in the indictment as “injustice”] is filled up?”

The indictment concluded with an extract from an article that appeared in the August 15, 1799, *Gazette*. In this case, too, the language

of the indictment, as reported by Wharton, varied in certain details from the article itself, but the substance was the same. The actual language of the article extract charged in the indictment was as follows: "At the same time, our administration publicly notified, that Tories, men who had fought against our independence, who had shared in the desolation of our towns, the abuse of our wives, sisters and daughters, were men worthy of the confidence of the government."

On April 28, 1800, Haswell appeared with his two lawyers, Israel Smith and a "Mr. Fay,"<sup>94</sup> who promptly moved for a continuance to permit them to secure the attendance of witnesses who would support the truth of Haswell's statements. Justice Paterson denied the motion as to one of the witnesses, ruling that his anticipated testimony as described by counsel would not be admissible in any event, but granted several days' adjournment to bring the others into court. Wharton's report of the trial proceedings is either greatly abbreviated or the evidence produced by the defense was thin at best. In fact, the latter may well be the case, because the presentation of evidence, the charge to the jury, the jury's deliberation, and delivery of the verdict all appear to have taken place on a single day, May 5, 1800.

As in Matthew Lyon's case, Justice Paterson's charge to the jury left little option but for the jury to find Haswell guilty. Judicial incitement to that end was probably unnecessary. The empanelled jurors were from east of the mountains, and could be expected to have little sympathy for a "radical" from the other side of the hilly divide. Justice Paterson had to acknowledge that the Sedition Act, unlike common-law defamation, made truth a defense. Haswell had, in fact, called witnesses who testified to the hardships Lyon was enduring in the jail presided over by the arch-Federalist marshal, Jabez Fitch. No evidence appears to have been offered to prove the truth of Haswell's assertion about the alleged favors and benefits conferred on Tories.

But Justice Paterson, consistent with other sedition cases, instructed the jury that truth would exonerate Haswell only if the defendant met each and every contention of the indictment. He pointed out that "as to the charge against the administration of selecting Tories 'who shared in the desolation of our homes,' &c., no attempt at justification had been made." Justice Paterson laid one other possible doubt to rest: "Nor was it necessary that the defendant should have written the defamatory matter. If it was issued in his paper, it is enough."<sup>95</sup>

Despite an eloquent plea to the jury in his own defense,<sup>96</sup> Haswell was found guilty "after a short deliberation," and he was fined \$200 and sentenced to two months' imprisonment, which he served in the Bennington jail. His release upon completion of his term was greeted with

much the same public celebration as attended Lyon's over a year earlier. "An immense concourse of people from the neighbouring country assembled to welcome him back to liberty . . . He marched forth from his quarters at the jail to the tune of "Yankee Doodle," played by a band, while the discharge of cannon signified the general satisfaction at his release."<sup>97</sup>

## CONCLUSION

In times of actual or perceived threat to the nation, civil liberties may be curtailed in the overriding pursuit of security. Freedom of speech and of the press, in particular, hang in the balance in such times.<sup>98</sup> The suspension of habeas corpus by President Lincoln, enactment of the Espionage and Sedition<sup>99</sup> Acts during World War I, and the forced relocation of ethnic Japanese during World War II were significant curtailments of civil liberties imposed during actual wars.

The calibration of civil liberties with the imperatives of national survival has an ancient pedigree. The principle that *public safety must be the highest law*<sup>100</sup> has been widely accepted as justification for trimming civil liberties in the context of a serious threat to national survival.<sup>101</sup> More controversial is the reduction of civil liberties in the face of circumstances other than actual or imminent war. The Cold War, the consequent rise of "McCarthyism," and the recent legislative and executive reactions to the perceived threat of terrorist attacks are examples within living memory. The USA PATRIOT Act,<sup>102</sup> widely viewed as a curtailment of civil liberties, has been subject to vigorous debate. The Sedition Act of 1798 did not emerge during an actual war and arguably has more in common with the McCarthy phenomenon and the USA PATRIOT Act than with the wartime measures taken by Lincoln, Wilson, and Franklin Roosevelt. It is only fair to note that in 1798 warlike acts had been committed by France against the infant United States: Scores of peaceful American merchant ships had been assaulted and captured by the French. When President Adams, in defiance of his saber-rattling Federalist cohorts, concluded a peace with France, the pretext for the Sedition Act vanished.

But Federalists did not readily loosen their hold on this law, which had been so useful a tool against their Republican opponents, including two western Vermonters. The Act expired by its terms in 1801, but an attempt was made by Federalists in Congress to renew it. Matthew Lyon, the act's first victim, spoke eloquently against it, and Congress finally laid that dismal law to rest.<sup>103</sup> Congress later remitted the fines levied against Lyon<sup>104</sup> and Haswell,<sup>105</sup> in belated recognition of the injustice that had been visited upon them amidst the war frenzy of the late 1790s.

Although the 1917 and 1918 enactments recruited much of the description of criminalized speech from the Sedition Act of 1798, prosecutions were directed against acts that amounted to more than mere obloquy against the government. *Schenck v. United States*<sup>106</sup> upheld the conviction of a man who had urged men to resist the draft. In *Abrams v. United States*,<sup>107</sup> defendants had circulated pamphlets urging cessation of industrial production needed for the war effort. The socialist leader Eugene V. Debs was convicted under the Espionage Act of urging draft resistance. The conviction was upheld in *Debs v. United States*.<sup>108</sup> Whatever quarrel one may have with these cases (*Abrams* was, in fact, later reversed by the Supreme Court),<sup>109</sup> there is no basis for charging that the Espionage Act was used as a cudgel against opponents merely political, as had woefully been the case under the Sedition Act. The lessons of 1798–1800 had been absorbed.

Public attitudes and the Sedition Act prosecutions in Vermont dramatized the political divide between the eastern and western halves of the state. Western Vermont was home to the strongest anti-Federalist journals: Haswell's *Vermont Gazette* and Lyon's *Farmer's Library and Scourge of Aristocracy*. The newspapers of the east, dominated by Alden Spooner's *Vermont Journal*, tended for the most part to hew to the Federalist line.

After the controversy over the Alien and Sedition Acts subsided, western Vermont continued to carry the banner for the more radical brands of reform, most notably during the middle 1800s, when pressure for the abolition of slavery dominated the political and religious conversation. Some of the most vigorous supporters of William Lloyd Garrison in his push for immediate emancipation, renunciation of government or political solutions, rejection of gradualist "colonization" schemes, and reliance on moral suasion were western Vermonters, such as Orson Murray and Rowland T. Robinson.<sup>110</sup>

While later enhancements in transportation, communication, and mass media, along with the changing demographics occasioned by immigration to the state, have obliterated the sharp ideological distinctions between eastern and western Vermont, the early history of the state cannot be appreciated without recognizing that early Vermont was, in many respects, a house divided. That the state held together partly by adoption of the "mountain rule" in the selection of other political leaders and, even until today, has alternated between Democrats and Republicans in every change of gubernatorial administration since that of F. Ray Keyser, ending in 1963, may be an unconscious memorial to the sharp divisions that set one half of the state against the other.

## NOTES

<sup>1</sup>Timothy Dwight, *Travels in New-England and New-York*, 4 vols. (London: William Baynes and Son, 1823), 453.

<sup>2</sup>David M. Ludlum, *Social Ferment in Vermont, 1791–1850* (1939; reprint, New York: AMS Press, 1966), 5–6.

<sup>3</sup>The minutes of a convention in Westminster on January 15, 1777, make reference to the New Hampshire Grants, “an independent jurisdiction forever hereafter to be called, known, and distinguished by the name of New-Connecticut, alias Vermont.” William Slade, *Vermont State Papers* (Middlebury: J. W. Copeland, 1823), 69–70.

<sup>4</sup>Ludlum, *Social Ferment*, 13.

<sup>5</sup>Anna H. Weeks to Holland Weeks, 20 October 1796, quoted in Aleine Austin, *Matthew Lyon: “New Man” of the Democratic Revolution, 1749–1822* (University Park: Pennsylvania State University Press, 1981), 48.

<sup>6</sup>*Ibid.*, 79–80.

<sup>7</sup>William A. Robinson, *Jeffersonian Democracy in New England* (New Haven: Yale University Press, 1916), 9. “Jacobins” were radicals in revolutionary France, deriving the sobriquet from the Parisian convent where they first met.

<sup>8</sup>Ludlum, *Social Ferment*, 14.

<sup>9</sup>Letter from Lyon to Stevens T. Mason (14 October 1798) written from the jail in Vergennes, Vermont, quoted in Austin, *Matthew Lyon*, 109.

<sup>10</sup>19 August 1794, 1, 4.

<sup>11</sup>It is significant that the record of the convention referred to in note 7 recites that it was attended by “the representatives on the west and east side of the range of Green Mountains.” The delegates are listed as either from the west or the east. Slade, *Vermont State Papers*, 66.

<sup>12</sup>William Doyle, *The Vermont Political Tradition: And Those Who Helped Make It*, revised ed. (Montpelier, Vt.: W. Doyle, 2003), 65.

<sup>13</sup>On the “mountain rule” generally, see Lyman Jay Gould and Samuel B. Hand, “A View from the Mountain: Perspectives of Vermont’s Political Geography,” in *In a State of Nature: Readings in Vermont History*, ed. H. N. Muller III and Samuel B. Hand (Montpelier: Vermont Historical Society, 1985), 186–190.

<sup>14</sup>1 Stat. at Large, 566–572, 577–578, 596–597.

<sup>15</sup>1 Stat. at Large, 414.

<sup>16</sup>John Adams to Thomas Jefferson, 14 June 1813, *The Adams-Jefferson Letters: The Complete Correspondence between Thomas Jefferson and Abigail and John Adams* (Chapel Hill: University of North Carolina Press, 1988), 329–330. Adams was responding to a letter from Jefferson to one “Dr. Priestly” (clearly meaning the renowned theologian/scientist Joseph Priestly, a known correspondent of Jefferson) in which Jefferson “disclaim[ed] the legitimacy of that Libel on legislation, which, under the form of a Law, was for Sometime placed among them” (quoted in Adams’s letter to Jefferson). Adams, defending the legislation to Jefferson, declared that “we were then at War with France; French spies swarmed in our Cities and in the Country.” Noting that Jefferson as vice president had also signed the law and that “I know not why you are not as responsible for it as I am,” Adams added, “This Law was never executed by me in any Instance.”

<sup>17</sup>1 Stat. at Large, 596–597.

<sup>18</sup>Letter from Theodore Sedgwick to unknown recipient, Philadelphia, 7 March 1798, quoted in James M. Smith, *Freedom’s Fetters: the Alien and Sedition Laws and American Civil Liberties*, *Cornell Studies in Civil Liberty* (Ithaca: Cornell University Press, 1956), 21n. “Improve” in this context means “To turn (a thing) to profit or good account, to employ to advantage; to make profitable use of, take advantage of, avail oneself of, utilize; to make use of, use, employ.” *Oxford English Dictionary*, s.v. “improve,” entry 2, definition 2.

<sup>19</sup>Smith, *Freedom’s Fetters*, 20–21.

<sup>20</sup>It is unclear from the language of the Act whether “utter” was used in a sense restricted to writings, which is fairly inferable from the context, or in the broader sense embracing spoken remarks. It appears that most, if not all, of the prosecutions under the Sedition Act were based, at least mainly, on writings.

<sup>21</sup>40 Stat. 219, amended by Act of 16 May 1918, ch. 75, 40 Stat. 553–54 (the Sedition Act), re-enacted by Act of 3 Mar 1921, ch. 136, 41 Stat. 1359.

<sup>22</sup>Woodrow Wilson, *A History of the American People in Five Volumes* (New York: Cosimo Classics, 2008 [1901–1902]) 3:153–154.

<sup>23</sup>Richard Hofstadter, *The Idea of a Party System* (Berkeley: University of California Press, 1975), 107.

<sup>24</sup>United States, *Annals*, formerly *Debates and proceedings of the Congress of the United States with an appendix, containing important state papers and public documents and the laws of a public*

*nature; with a copious index.* (1789): 2137. The bill was originally introduced in the Senate on June 26, 1798, by Federalist Senator James Lloyd of Maryland (*ibid.*, 589) and passed by the Senate on July 4 (*ibid.*, 599).

<sup>25</sup> *Ibid.*, 2171. The debate commences at 2139.

<sup>26</sup> Larry Gragg speculates that the date of expiration was selected “to underscore [the Act’s] political purpose.” Larry Gragg, “Order Vs. Liberty,” *American History* 33 (1998): 24–29.

<sup>27</sup> A letter from Brattleboro (then Brattleborough), Vermont, to the *Albany Centinel*, 3 August 1798, 2, praised Morris for supporting the federal government against “foreign tyranny and domestic faction.” The writer added: “When our country reflect on the integrity and federalism of a Morris, may they pardon the folly, the indecorum and phrenzy of a Lyon.”

<sup>28</sup> Frank M. Anderson, “Contemporary Opinion of the Virginia and Kentucky Resolutions I,” *American Historical Review* 5 (1899): 45–63, and “Contemporary Opinion of the Virginia and Kentucky Resolutions II,” *American Historical Review* 5 (1899): 225–252. Douglas Bradburn, “A Clamor in the Public Mind: Opposition to the Alien and Sedition Acts,” *William and Mary Quarterly* 65 (2008): 565–600; Thomas F. Carroll, “Freedom of Speech and the Press in the Federalist Period: The Sedition Act,” *Michigan Law Review* 18 (1919–1920): 615–651, Adrienne Koch and Harry Ammon, “The Virginia and Kentucky Resolutions: An Episode in Jefferson’s and Madison’s Defense of Civil Liberties,” *William and Mary Quarterly* 5 (1948): 145–176; John Chester Miller, *Crisis in Freedom: The Alien and Sedition Acts* (Boston: Little, Brown, 1951), Smith, *Freedom’s Fetters*.

<sup>29</sup> Anderson, “Contemporary Opinion” I and II; Koch and Ammon, “Virginia and Kentucky Resolutions.”

<sup>30</sup> Possibly three: see note 59.

<sup>31</sup> Bradburn, “A Clamor.”

<sup>32</sup> “[A] tall flagstaff surmounted by a liberty cap, the flag of a republic, or other object regarded as a symbol of liberty.” Philip B. Gove, *Webster’s Third New International Dictionary of the English Language Unabridged* (Springfield, Mass.: G. & C. Merriam, 1976), 1303 s.v. “liberty pole.”

<sup>33</sup> A characteristic newspaper philippic against the erectors of liberty poles is contained in the *Federal Galaxy*, Brattleboro, 25 August 1798, 2: “Almost every town exhibits a liberty pole, as they falsely term it, which these sons of Belial have erected to their idol faction.” For a reference to the Wallingford liberty pole, see Hugh Gainé, *The Journals of Hugh Gainé, Printer* (New York: Arno, 1970), 188.

<sup>34</sup> Miller, *Crisis*, 143.

<sup>35</sup> *Federal Galaxy* (Brattleboro), 25 August 1798, 3, referring to “our sapient Jacobin French apologists”; *Spooner’s Vermont Journal* (Windsor), 28 August 1798, 1: “Blush, Jacobins – for these are your friends and fraternizers – Hide yourselves, ye Sans Culottes; call upon the rocks and the mountains to cover you”; *Rutland Herald*, 29 October 1798, 2: “A Jacobin placed an headless effigy before Mr. [Elbridge] Gerry’s house the other day – in hopes he would suppose it the doings of a federalist and be irritated against his government.” These are just a few of over 150 references to Jacobins and Jacobinism in Vermont newspapers during John Adams’s administration.

<sup>36</sup> *Vermont Gazette* (Bennington), 11 August 1798, 2: “it is the intention of the federalists to introduce into this country, the system of Jacobinism.”

<sup>37</sup> Anderson, “Contemporary Opinion II,” 247–248.

<sup>38</sup> *Ibid.*, 245–249.

<sup>39</sup> *Ibid.*, 245–252. The Vermont minority protest is reproduced at 249–252.

<sup>40</sup> For an account of the indictment and trial, see Smith, *Freedom’s Fetters*, 247–257. The editor of the newspaper, Thomas Adams, was not brought to trial on account of illness. The prosecution settled for the paper’s bookkeeper.

<sup>41</sup> 1 Stat. at Large, 597.

<sup>42</sup> “The truth of the offensive statement or communication is an absolute or complete defense to a claim of defamation, whether the claim is one sounding in libel or slander, regardless of bad faith or malicious purpose or the malice or ill will of the publisher.” 50 *American Jurisprudence* 2d, “Libel and Slander,” §249. Footnotes omitted.

<sup>43</sup> William Blackstone, *Commentaries on the Laws of England*, 4 vols., (Chicago: University of Chicago Press, 1979 [1765–1769]), 4:150. Footnotes omitted.

<sup>44</sup> *Ibid.*, 4:151.

<sup>45</sup> “No. 16 – An Act Relating to the Writ of Habeas Corpus to Persons Claimed as Fugitive Slaves, and the Right to Trial by Jury,” in *Acts and Resolves Passed by the Legislature of the State of Vermont at the October Session, 1850* (Montpelier, Vt.: E. P. Walton and Sons, 1850), 9–10, cited in Horace K. Houston, Jr. “Another Nullification Crisis: Vermont’s 1850 Habeas Corpus Law,” *New England Quarterly* 77 (2004): 262.

<sup>46</sup> Article I, Chapter 1 (1777).

<sup>47</sup> Houston, “Nullification Crisis,” 265–266 and footnotes therein.

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<sup>48</sup> On the issues raised by this Vermont initiative, see, generally, Houston, “Nullification Crisis.” In 1858, the Vermont General Assembly enacted (No. 37) “An Act to Secure Freedom to all Persons within this State.” In addition to freedom and imprisonment for holding a person in slavery within the state, the Act provided (sec. 5), “Neither descent, near or remote, from an African, whether such African is or may have been a slave or not, nor color of skin or complexion, shall disqualify any person from being, or prevent any person from becoming, a citizen of this State, nor deprive such person of the right and privileges thereof.”

<sup>49</sup> State Papers of Vermont, *Journal and Proceedings of the General Assembly of the State of Vermont 1797–1799*, ed. Marlene B. Wallace, vol. III (Montpelier, Vt.: Secretary of State, 1978), 607. Italics in original.

<sup>50</sup> *Ibid.* The complete text of the majority resolution on the Kentucky Resolution is in *Journal of General Assembly*, 607–610.

<sup>51</sup> Vermont criminalized blasphemy and defamation until the laws (Vermont Statutes 1947, Title 13, §§801–802) were repealed in 1799.

<sup>52</sup> A law passed by the General Assembly of Vermont on February 11, 1779, established “the common law as it is generally practiced and understood in the New-England states.” Slade, *Vermont State Papers*, 288.

<sup>53</sup> *Oxford English Dictionary*, s.v. “jealousy.”

<sup>54</sup> Jefferson also used the word in its invidious sense, referring to “further discontents and jealousies among us.” *A Summary View of the Rights of British America*.

<sup>55</sup> The complete text of the minority resolution on the Kentucky and Virginia Resolutions is in, *Journal of General Assembly*, 675–680 (November 5, 1799).

<sup>56</sup> Frank M. Anderson, “The Enforcement of the Alien and Sedition Laws,” in *Annual Report of the American Historical Association for the Year 1912* (Washington: American Historical Association, 1914), 120.

<sup>57</sup> John E. Ferling, *Adams vs. Jefferson: The Tumultuous Election of 1800* (New York: Oxford University Press, 2004).

<sup>58</sup> Smith, *Freedom’s Fetters*, 185.

<sup>59</sup> *New London Connecticut Gazette*, 21 May, 1800, 3.

<sup>60</sup> Background information about Lyon is drawn chiefly from Austin, *Matthew Lyon*; J. Fairfax McLaughlin, *Matthew Lyon, the Hampden of Congress a Biography* (New York: Wynkoop Hallenbeck Crawford Company, 1900) Pliny H. White, *The Life and Services of Matthew Lyon. An Address Pronounced October 29, 1858, before the Vermont Historical Society, in the Presence of the General Assembly of Vermont* (Burlington: Times job office print, 1858). The Austin biography is the single modern book-length treatment and is equipped with a satisfying scholarly apparatus. McLaughlin was Lyon’s great-grandson. Although his treatment of Lyon was understandably somewhat tententious, McLaughlin drew on cited archival sources as well as family communications. Reverend White, also a lawyer and journalist, presented an engaging account of Lyon, although not without some errors. White gives July 4, 1798, as the date of the Sedition Act. The correct date is July 14. White has Lyon born “about 1746”; Lyon was born July 14, 1749. *Biographical Directory of the United States Congress, 1774–Present* (United States Congress, 1998); available from <http://purl.access.gpo.gov/GPO/LPS21383> (accessed July 31, 2009).

<sup>61</sup> William Cothren, *History of Ancient Woodbury, Connecticut: From the First Indian Deed in 1659* (Waterbury, Conn.: Bronson Brothers, 1854), 320.

<sup>62</sup> Austin, *Matthew Lyon*, 158, n. 126 cites *Ye Horsforde Book*, 43, but does not provide any full bibliographic information that I was able to find. She is likely referring to H. H. Hosford, *Ye Horsforde Booke: The Horsford-Hosford Family in the United States of America* (Cleveland: Tower Press, 1936). I have not examined this source.

<sup>63</sup> McLaughlin, *Lyon*, 175.

<sup>64</sup> Some authors have described Lyon’s first wife, Mary Horsford, as Ethan Allen’s niece. Austin describes the actual relationship: Mary’s mother was married to the brother of Ethan Allen’s father. Austin, *Matthew Lyon*, 11.

<sup>65</sup> The 1777 Vermont Constitution “provided mechanisms by which the Allen-Chittenden faction intended to control the wheels of state.” Muller and Hand, *In a State of Nature*, 39.

<sup>66</sup> Austin, *Matthew Lyon*, 22.

<sup>67</sup> The most complete account of these events was given by Lyon himself in an extended statement given to a congressional committee in his own defense, on the occasion of the fracas with Congressman Roger Griswold. United States, *Annals*, 5th Congress, 1025–1029. Given the self-serving purpose of Lyon’s declaration, the accuracy of his narrative may be open to question in some particulars.

<sup>68</sup> For a contemporary account of that rebellion, see James Gordon, *The History of the Irish Rebellion* (Philadelphia: John Clarke & Co., 1813), 96–102.

<sup>69</sup> United States, *Annals*, 5th Congress, 955–1029.

<sup>70</sup> *Ibid.*, 1034–1058.

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<sup>71</sup>Reported as October 3, 1798 in White, *Matthew Lyon*. The October 5, 1798, date is based on Francis Wharton, *State Trials of the United States During the Administrations of Washington and Adams* (Philadelphia: Carey and Hart, 1849), 333.

<sup>72</sup>31 July 1798, 1–2.

<sup>73</sup>Wharton, *State Trials*, 333.

<sup>74</sup>H. P. Smith, *History of Addison County, Vermont* (Syracuse, N.Y.: D. Mason & Co., 1886), 659–660. He should not be confused with Noah Smith, who is reported to have been an “Assistant Judge” on the Supreme Court in 1800. Vermont Supreme Court [from old catalog] and Royall Tyler, *Reports of Cases Argued and Determined in the Supreme Court of Judicature of the State of Vermont. With Cases of Practice and Rules of the Court* (New York: I. Riley, 1809), 3; Zadock Thompson, *History of Vermont, Natural, Civil and Statistical, in Three Parts, with a New Map of the State, and 200 Engravings* (Burlington, Vt.: Stacy & Jameson, 1853), 123.

<sup>75</sup>Lyon had run unsuccessfully against Smith for Congress in the elections of 1790, 1792, and 1794, finally defeating him in 1796.

<sup>76</sup>Vermont Historical Society. [from old catalog] et al., *Addresses Delivered before the Vermont Historical Society* (Montpelier: Walton’s Steam Printing Establishment, 1866), 37 (in an address by Pliny H. White, “Jonas Galusha: The Fifth Governor of Vermont”).

<sup>77</sup>Thompson, *History*, 89.

<sup>78</sup>Senate. Historical Office, *Biographical Directory of the United States Congress, 1774–Present*. Online at <http://bioguide.congress.gov/biosearch/biosearch.asp>.

<sup>79</sup>Wharton, *State Trials*, 336.

<sup>80</sup>The honor is debatable, based on how one views the order of voting on the crucial ballot. An extended defense of Lyon’s claim to it is made in William P. Kennedy, “Matthew Lyon Cast the Deciding Vote Which Elected Thomas Jefferson President in 1801,” ed., 2d Session, 77th Congress (Government Printing Office, 1942). However, a more realistic assessment bestows the honor on Lyon only because Vermont was the last state to vote. Before the final ballot was taken, the result was a foregone conclusion.

<sup>81</sup>Anthony Haswell, *Hymn on Masonry Presented to Temple Lodge, by a Brother, to Be Sung at the Installation of Their Officers* (Bennington, Vt.: Anthony Haswell, 1793).

<sup>82</sup>Anthony Haswell and Isaac Tichenor, *Illustrious and Beloved General Washington, Has Departed from Scenes of Mortal Life* (Bennington, Vt.: Anthony Haswell, 1799).

<sup>83</sup>Anthony Haswell, *An Oration, Delivered at Bennington, Vermont, August 16th, 1799 in Commemoration of the Battle of Bennington* (Bennington, Vt.: Anthony Haswell, 1799).

<sup>84</sup>Anthony Haswell, *An Oration Delivered at Shaftsbury, on Sunday, January 10, 1802, at the Interment of Capt. Aaron Cole* (Bennington, Vt.: Anthony Haswell, 1802).

<sup>85</sup>Bennington, Vt: Darius [Clark], 1819.

<sup>86</sup>Charles A. Jellison, *Ethan Allen: Frontier Rebel* (Syracuse, N.Y.: Syracuse University Press, 1969), 310.

<sup>87</sup>John Spargo, *Anthony Haswell, Printer-Patriot-Ballader; a Biographical Study* (Rutland, Vt.: The Tuttle Company, 1925), 56.

<sup>88</sup>Reproduced in Smith, *Freedom’s Fetters*, 245, and quoted in Austin, *Matthew Lyon*, 126.

<sup>89</sup>Spargo, *Haswell*, 56–57.

<sup>90</sup>*Ibid.*, 58.

<sup>91</sup>*Ibid.*, 67.

<sup>92</sup>Description of the trial is based on the report in Wharton, *State Trials*, 684–687.

<sup>93</sup>The language of the indictment is reproduced from Wharton, *State Trials*, 684–685. It is, of course, possible that Wharton has misquoted the indictment and that the indictment correctly quoted the article.

<sup>94</sup>Possibly David Fay, a Republican lawyer, then state’s attorney of Bennington County. See brief biography in Prentiss C. Dodge, *Encyclopedia Vermont Biography: A Series of Authentic Biographical Sketches of the Representative Men of Vermont and Sons of Vermont in Other States, 1912* (Burlington, Vt.: Ullery Publishing Co., 1912), 83.

<sup>95</sup>Wharton, *State Trials*, 686.

<sup>96</sup>*Ibid.*, 685–686, note.

<sup>97</sup>*Ibid.*, 687, note.

<sup>98</sup>For a historical survey of the wartime circumscription of free speech in the United States, see Geoffrey R. Stone, *Perilous Times: Free Speech in Wartime from the Sedition Act of 1798 to the War on Terrorism* (New York: W.W. Norton, 2004).

<sup>99</sup>See note 22.

<sup>100</sup>“*Salus populi suprema lex esto*,” Cicero, *De legibus*, 3.3.8.

<sup>101</sup>Clinton Rossiter, *Constitutional Dictatorship : Crisis Government in the Modern Democracies* (Princeton, N.J.: Princeton University Press, 1948); Richard A. Posner, *Not a Suicide Pact: The Constitution in a Time of National Emergency* (New York: Oxford University Press, 2006).

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<sup>102</sup> P.L. 107–56, 115 Stat. 271–402, 107th Congress.

<sup>103</sup> United States, *Annals*, 6th Congress, 973–975, 1049–1050.

<sup>104</sup> H.R. 80, 26th Congress (1840).

<sup>105</sup> H.R. 72, 28th Congress (1844).

<sup>106</sup> 249 U.S. 47 (1919).

<sup>107</sup> 250 U.S. 616 (1919).

<sup>108</sup> 249 U.S. 211 (1919).

<sup>109</sup> *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

<sup>110</sup> Ludlum, *Social Ferment*, 134–198; Jane Williamson, “Rowland T. Robinson, Rokeby, and the Underground Railroad in Vermont,” *Vermont History* 69 (Supplement, 2001): 19–31.