

ALEXANDER HAMILTON'S USE, ABUSE,
AND DEFENSE OF THE PRESS

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ABSTRACT

ALEXANDER HAMILTON'S USE, ABUSE, AND DEFENSE OF THE PRESS

By

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The purpose of this study is to recount Alexander Hamilton's experiences with the newspapers of his day and to present his attitudes toward the free press concept. By means of a historical review, it seeks to establish his reputation with regard to the press.

The first chapter shows Hamilton taking advantage of the journalistic outlets of his day. He wrote a reputation as an effective contributor to the press, even serving as the Federalist Party's unofficial press secretary when Secretary of the Treasury.

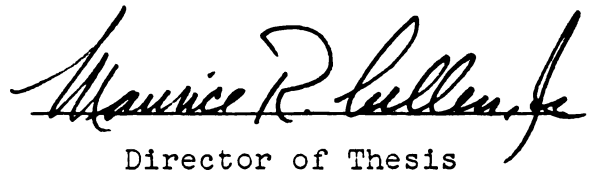
The second chapter concerns the damage Hamilton did his own and his party's reputation by rushing into print inappropriately and carelessly.

The third chapter examines the two reputations Hamilton has earned: as opponent and defender of the free press. The conclusion is drawn that he considered the press to be the appropriate forum for criticizing government both before and after he assumed power. But when in

power, Hamilton considered it an irresponsible threat to national security.

Hamilton's final word on the subject of the press was a most libertarian one. In fact, he can be credited with moving the country in the direction of democratizing libel law.

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INTRODUCTION

In 1943, Frank Luther Mott wrote a monograph entitled Jefferson and the Press in order to gather in one place Jefferson's major statements and actions with regard to the press. The purpose of this study is to do the same with Alexander Hamilton: to recount his experiences with the newspapers of his time and to present his attitudes toward the free press concept.

The press played an enormous role in the lives and times of Jefferson and Hamilton. They both read the papers of the day. Both sought out editors who might establish papers supportive of their respective philosophies. Both felt much more affection for the concept of a free press when outside of power--from a loyal opposition point of view--than when in power, under the scrutiny of unfriendly as well as friendly individuals.

But while it is common knowledge that Jefferson's attitude toward the First Amendment was a libertarian one, Hamilton's attitude is less well known. He, too, finally took a libertarian point of view, though it was not until the last of his forty-seven years that he made his final, strong statement in recognition of the need for a fourth estate as a check on government and public officials. In

1804, in People versus Croswell, he defined the liberty of the press as consisting "in the right to publish with impunity truth, with good motives, for justifiable ends, though reflecting on government, magistracy, or individuals."

Unlike Jefferson, whose temperament led him to write privately, Hamilton took advantage of the printing presses of the day to add his thoughts to the marketplace of ideas. He was not a regular contributor to newspapers, but his pieces usually had some effect. He established a reputation as a spokesman for both popular and unpopular causes--for the revolution, for the Loyalists after the war, for the proposed Constitution, and for the Federalist Party, among others. In his position as President Washington's Secretary of the Treasury, he served at times as the Federalist Party's unofficial press secretary, a perfectly acceptable phenomenon in the days before reporter interviews and press conferences. His reputation as an effective writer even earned Jefferson's praise on at least three occasions, including the ultimate compliment that Hamilton was "an host unto himself" when he took up his pen for a cause.

But Hamilton's judgment was not always as masterful as his prose. He wrote well, but he never learned when it was inappropriate to write. He came to believe that his pen was all-powerful. His pen, which did much to make him a figure of respect, also stained his character. Lacking Jefferson's

power of restraint, Hamilton rushed into print whenever he considered himself criticized. In retaliation, he often responded more emotionally than rationally. As a result, he damaged his own and his party's reputation on more than one occasion. Most notably, by attacking President John Adams in print, he helped to split the Federalist Party, and by entering into a newspaper feud while Secretary of the Treasury, he hastened the rise of the two-party system, a development he dreaded.

So Hamilton experienced both the rewards of well-received authorship and the consequences of ill-chosen public expressions. For him the press must surely have been a mixed blessing, as it has been for most politicians since. When the press was critical of him he considered it an irresponsible and licentious threat to national security. When the Federalists lost their power and became the minority party, Hamilton viewed the press as an indispensable and primary ingredient to the Republic.

I. HAMILTON WRITES HIMSELF INTO REPUTATION

At an early age Alexander Hamilton experienced the satisfaction of publication and saw the dramatic impact a single newspaper piece can make. When he was seventeen, he wrote an account of a fierce hurricane that swept through his West Indian island home of St. Croix. Addressed to his father, Hamilton also showed his essay to a Presbyterian clergyman, the Reverend Hugh Knox, who saw that it was published in The Royal Danish-American Gazette, the chief English newspaper on the island. Knox was sufficiently impressed with Hamilton's talent to collect the money necessary to send him to the American colonies for an education.¹

The "Hurricane Letter" is a dramatic example of purple prose, the product of a teen-ager, who wrote:

It seemed as if a total dissolution of nature was taking place. The roaring of the sea and wind--fiery meteors flying about in the air--the prodigious glare of almost perpetual lightning--the crash of

¹Broadus Mitchell, Alexander Hamilton: The Revolutionary Years (New York: Thomas Y. Crowell Company, 1970), p. 3; Claude G. Bowers, Jefferson and Hamilton: The Struggle for Democracy in America (Boston: Houghton Mifflin Company, 1966), p. 24; and John C. Miller, Alexander Hamilton: Portrait in Paradox (New York: Harper and Row, 1959), p. 5.

the falling houses--and the ear-piercing shrieks of the distressed, were sufficient to strike astonishment into Angels.²

Although it is doubtful whether Hamilton "would have shone with equal luster in the reportorial room of a modern paper,"³ as one biographer suggested, he illustrated his ability to communicate a graphic picture of his observations. More glaring than the youthful, featurized account is the stilted quality of the prose, the heavy moralizing of a young man under the heavy influence of religion. After his description of the hurricane, Hamilton went on to reflect:

Where now, Oh! vile worm, is all thy boasted fortitude and resolution? what is become of thy arrogance and self-sufficiency?--why dost thou tremble and stand aghast? how humble--how helpless--how contemptible you now appear. And for why? the jarring of the elements--the discord of clouds? Oh, impotent presumptuous fool! how darest thou offend that omnipotence, whose nod alone were sufficient to quell the destruction that hovers over thee, or crush thee into atoms.⁴

Hamilton was to later eliminate this sort of sermonizing from his newspaper contributions, though the tendency toward self-righteousness never entirely left him. The

²The Royal Danish-American Gazette, vol. 3, no. 234, Saturday, October 3, 1772; cited by Gertrude Atherton, ed., A Few of Hamilton's Letters (New York: The Macmillan Company, 1903), p. 262.

³Bowers, Jefferson and Hamilton, p. 25.

⁴Atherton, Letters, p. 263.

one quality of the "Hurricane Letter" that recurs in almost all of his publications is "the intense seriousness of youth."⁵

The "Hurricane Letter" was significant in Hamilton's life not only because it was his ticket to America, but also because it gave him an early sense of confidence with a pen in his hand.

In the fall of 1772, after the appearance of the "Hurricane Letter," Hamilton sailed for New York and entered King's College (now Columbia University). Soon he became interested and involved in the revolutionary spirit of many of his classmates. While at King's, he learned of the Boston Tea Party and wrote a "Defence of the Destruction of the Tea," which appeared in Holt's Journal.

His revolutionary sympathies continued to emerge after the First Continental Congress met in Philadelphia in 1774 and decided to boycott all English goods. In response to that decision an Anglican clergyman, Dr. Samuel Seabury, addressed an effective pamphlet to the farmers of America. He argued the conservative position that little was to be gained from the radical boycott. He signed it "A Westchester Farmer."

A response to Seabury appeared on December 15, from the printing press of James Rivington in New York. Entitled

⁵Frederick Scott Oliver, Alexander Hamilton: An Essay on American Union (New York: G. P. Putnam's Sons, 1923), p. 429.

"A Full Vindication of the Measures of Congress from the calumnies of their enemies, in answer to a letter under the signature of a Westchester Farmer," it was Hamilton's "first important work, a major contribution to the literature of the American Revolution."⁶ His purpose was to debunk the assertion of the conservatives that the colonies had everything to lose by boycotting English goods. Like the "Hurricane Letter," this pamphlet was full of immature phrases, but it was the first example of Hamilton's ability to logically sum up all arguments of a position and to present them to every element of society through generalities. "It was a catch-all, a net in which to gather all classes and conditions of society for a single defense against British aggression."⁷

Hamilton's theme embodied the argument--more of the heart than of the head--of natural rights. "That Americans are entitled to freedom is incontestable on every rational principle," he claimed, and went on:

All men have one common original: they participate in one common nature, and consequently have one common right. No reason can be assigned why one man should exercise any power or pre-eminence over his fellow-creatures more than another; unless they

⁶Saul K. Padover, ed., The Mind of Alexander Hamilton (New York: Harper and Row, 1953), p. 6.

⁷Nathan Schachner, Alexander Hamilton (New York: D.-Appleton-Century Company, Inc., 1946), p. 37.

have voluntarily vested him with it. Since, then, Americans have not, by any act of theirs, empowered the British Parliament to make laws for them, it follows they can have no just authority to do it.⁸

"A Full Vindication" must have hit its mark, since Seabury considered the pamphlet worthy of response--always a good test of the significance of a piece. And again Hamilton answered, pursuing "his victim with an ardour whetted on applause."⁹ His second essay was entitled "The Farmer Refuted or a more comprehensive and impartial View of the Disputes between Great Britain and the Colonies." It may have been more comprehensive than "A Full Vindication," filling 122 pages in the Lodge edition of Hamilton's works, but it was no more impartial. Characteristically, the young Hamilton employed logic wherever possible, but also used emotional sentiments where necessary, as in this passage of full capital-lettered prose:

THE SACRED RIGHTS OF MANKIND ARE NOT TO BE RUMMAGED FOR AMONG OLD PARCHMENTS OF MUSTY RECORDS. THEY ARE WRITTEN, AS WITH A SUNBEAM, IN THE WHOLE VOLUME OF HUMAN NATURE, BY THE HAND OF THE DIVINITY ITSELF, AND CAN NEVER BE ERASED OR OBSCURED BY MORTAL POWER.¹⁰

At least Hamilton concluded in a mature vein, noting with a realist's common sense that "the best way to secure a

⁸Alexander Hamilton, The Works of Alexander Hamilton, ed., Henry Cabot Lodge, vol. 1 (New York: G.P. Putnam's Sons, 1904), p. 6.

⁹Oliver, Hamilton, p. 29.

¹⁰Works, vol. 1, p. 113.

permanent and happy union between Great Britain and the colonies, is to permit the latter to be as free as they desire."¹¹

When the patriot leaders learned that the author of the two pamphlets was not an experienced practitioner of patriot literature, but just a college student, they were startled--and of course pleased. Hamilton's reputation as an effective author was thus solidly established by the time he was twenty years old.

Perhaps Hamilton was feeling too secure in his own ability after sensing the sweet taste of well-received authorship. For now, in June of 1775, he made the mistake of rushing into print without careful thought. He wrote regarding the Quebec Act, passed by the British Parliament in part to avert the possibility of Canadian revolutionary fervor. The act restored the full religious liberty of Canada's French Catholics, as well as their legal and political institutions. Historians today consider this a most statesmanlike and wise piece of legislation, but it brought cries of "Popery" from Protestant ministers in the northern colonies.

Hamilton, eager to capitalize on any situation that might help to unite the colonists in ill feeling against

¹¹Works, vol. 1, p. 113.

the British, expediently seized the opportunity "to excite religious prejudice against the British Government for their toleration, or, as Hamilton preferred to allege, their establishment of Roman Catholicism in Canada."¹²

In his "Remarks on the Quebec Bill," Hamilton raged against an act that "makes effectual provision not only for the protection but for the permanent support of Popery," an act that "develops the dark designs of the ministry more fully than any thing they have done."¹³ His remarks were blatant propaganda, "a frank appeal to racial and religious prejudice."¹⁴ What Hamilton did not consider as he dashed off his angry tirade was that while he might be increasing the degree of hatred toward the British in a few cases, he was also risking the loss of Canadian support in the revolutionary cause. While it is difficult to ascertain, John C. Miller found that Hamilton had occasion to regret his "unsparing condemnation of the Roman Catholics," for within a month or two of his published remarks the Continental Congress was seeking French Canadian support in the revolutionary cause.¹⁵ Nathan Schachner also concluded

¹²Oliver, Hamilton, p. 31.

¹³Works, vol. 1, pp. 137, 194.

¹⁴Schachner, Hamilton, p. 39.

¹⁵Hamilton, p. 20.

that Hamilton's remarks did "infinite harm to the cause of revolution" since "the agitation over the Quebec Act and the vituperation poured over the Catholic sensibilities of the Canadians were to hold them loyal to the cause of England in the forthcoming struggle."¹⁶

While Hamilton had firmly placed himself on the revolutionary side by 1775 and had defended the action of those who had dumped taxed tea into the Boston Harbor, he was a conservative on the question of law and order. Between his two passions in early life--love of freedom and hatred of mob rule--his passion for the latter was stronger. In October a Connecticut mob was recruited by Issac Sears, a leader of the New York Sons of Liberty, to come to New York and stir things up. They destroyed the printing press of James Rivington. Hamilton was furious.

Rivington was the printer who had published Hamilton's two pamphlets in response to "The Westchester Farmer," but he was a publisher of Loyalist tracts for whom Hamilton had no love. Hamilton wrote John Jay his reaction:

You will probably ere this reaches you have heard of the late incursion made into this city by a number of horsemen from New England under the command of Capt. Sears, who took away Mr. Rivington's types and a Couteau or two. Though I am fully sensible how dangerous and pernicious Rivington's press has been, and

¹⁶Hamilton, p. 40.

how detestable the character of the man is in every respect, yet I cannot help disapproving and condemning this step.¹⁷

The issue of freedom of the press was probably not forefront in Hamilton's mind. Indeed there is no reason to think it was even present. But it is noteworthy that Hamilton objected strongly to a relatively minor act of lawlessness in a chaotic period of history. One could well imagine him rejoicing in the loss of Rivington's Loyalist printing press, or at least being indifferent to the ill fortune of a Tory printer.

When Hamilton next appeared in the press, he had spent a year as General George Washington's closest military aide, writing correspondence for him and growing increasingly frustrated with the Continental Congress' unwillingness to provide more support for the Continental Army. He was particularly angered when he learned of the speculation of Maryland Congressman Samuel Chase. Chase had taken advantage of inside information concerning a government purchase of grain and had sent agents to corner the market. In three successive letters in Holt's Journal, and writing under the pen name of Publius, Hamilton attacked Chase.

Without naming the congressman, Hamilton wrote that any member of Congress who speculates "ought to feel the

¹⁷"Letter to John Jay," November 26, 1775, The Papers of Alexander Hamilton, ed., Harold C. Syrett and Jacob E. Cooke, vol. 1 (New York: Columbia University Press, 1961), p. 176.

utmost vigor of public resentment, and be detested as a traitor of the worst and most dangerous kind."¹⁸ His second letter still mentioned no names, though by this time it was public knowledge who had cornered the grain market. In his third and final letter, Hamilton promised that "the defects" of the corrupt congressman's "private character shall pass untouched."¹⁹ He then went on to attack Chase's character, calling him a callous and cunning man guilty of self-love and incapable of remorse, implying thereby, unworthy of forgiveness.

Perhaps it has been overstated by Claude G. Bowers, a Jefferson partisan, that "nowhere in the literature of invective is there anything more vitriolic than the attack on a war speculator."²⁰ But the letters were brutally sarcastic and rather "a pompous exercise."²¹ They were effective to the extent that the publicity forced the Maryland legislature to hold a hearing into the charges, but an expected partisan vote cleared Chase of any wrongdoing. Chase never discovered the identity of Publius and, ironically, later became a close political associate of Hamilton's in the highest circles of the Federalist Party.

¹⁸October 19, 1778, Works, vol. 1, p. 201.

¹⁹November 16, 1778, Works, vol. 1, p. 206.

²⁰Jefferson and Hamilton, p. 26.

²¹Oliver, Hamilton, p. 84.

It is interesting to note that in 1778 Hamilton recognized the public press as the proper forum for criticism of a public figure. He was to lose sight of this realization later when he became a public figure himself. He was later to consider criticism of a government figure a threat to national security and an intolerable excess. But his criticism of Chase placed him on the record in support of a free press. He also placed himself on the record by a covering letter to publisher Holt, which accompanied his first attack on Chase. In it he explained that he had chosen Holt's Journal for his letters because "the opinion I have of the independence of your spirit convinces me you will ever be a faithful guardian of the liberty of the press."²²

Hamilton did not appear in print publicly again until he had resigned as Washington's aide-de-camp. In the spring of 1781, he took advantage of the leisure time he had before he was elected to the Continental Congress from New York to reflect on his plan for the organization of the national government. In a series of six newspaper articles from July 12, 1781, to July 4, 1782, he "made an eloquent and closely reasoned plea for a closer union of the States under the aegis of the Continental Congress."²³ Writing

²²Works, vol. 1, p. 199.

²³Miller, Hamilton, p. 59.

as "A. B.," Hamilton's "The Continentalist" series accentuated his lifelong theme: that continental nationalism was essential to the survival of the new nation and that the means to that end was more power to Congress and less to the individual states. The series marked the early beginning of a movement toward a new system of government. Hamilton appealed to the people to drop their excessive state loyalties and to become a race of Americans. He proposed that a Constitutional Convention be held to write a solid foundation for a strong federal government, one strong enough to be able to win the war by having the power to tax the people directly.

The war did end and the British left New York in November, 1783. In that year, Hamilton championed the cause of civil liberties by his defense of the Loyalists. A great many New Yorkers, behind Governor Clinton, were swept by a wave of hostility toward those who had remained loyal to England during the war. Hamilton thought it wise to make peace with the Loyalists and keep their good services in the country. So he addressed the "considerate Citizens of New York" as Phocion.* His argument was good and his appeal was noble. He wrote that "there is not a

*Phocion was an Athenian leader who embraced the cause of those who most differed from him.

single interest of the community but dictates moderation rather than violence. That honesty is still the best policy; that justice and moderation are the surest supports of every government, are maxims which, however they may be called trite, are at all times true; though too seldom regarded, but rarely neglected with impunity."²⁴ When Phocion was answered by an anonymous Mentor, Hamilton wrote again, probably in April, on the same theme:

If we set out with justice, moderation, liberality, and a scrupulous regard to the constitution, the government will acquire a spirit and tone, productive of permanent blessings to the community....The world has its eye upon America.²⁵

This rhetoric supports the conclusion that the two Phocion letters "are among the noblest and most persuasive of his writings."²⁶ Historian John C. Miller, who has written one of the most objective and thorough biographies of Hamilton, concluded that for his courage as Phocion, Hamilton suffered. "By championing the Loyalists, Hamilton exposed himself to the charge of being a Tory-lover.... Newspaper writers speculated as to the number of pieces of silver for which he had sold his country."²⁷

²⁴Papers, vol. 3, p. 495.

²⁵Papers, vol. 3, pp. 556, 557.

²⁶Oliver, Hamilton, p. 120.

²⁷Miller, Hamilton, p. 103.

As Phocion, Hamilton employed his talent as an effective writer for a useful, important, and worthwhile cause. He was to do the same in 1787 when the proposed Constitution needed defending. The Constitution agreed upon at the Constitutional Convention was hardly the ideal model Hamilton had envisioned, but he was willing and even eager to defend it. He considered it far superior to the Articles of Confederation in that it provided for a central government with more authority, and he always assumed that it would serve only as a guide which could be interpreted to suit his philosophy.

Even as the Constitution was still on the drafting table, New York Governor Clinton, an avid states-rights man opposed to strong federal government, urged his people to rally around the old Articles. In the Daily Advertiser of June 21, 1787, Hamilton accused Clinton of prejudging the document. Soon after the Constitution made its appearance, Clinton wrote as Cato in the New York Journal, and was answered by Caesar in the Daily Advertiser. Caesar has been widely thought to be Hamilton. But in 1960 a case was made disputing the assertion of Hamilton's authorship, a case which is well documented and wholly convincing.

²⁸See Jacob E. Cooke, "Alexander Hamilton's Authorship of the 'Caesar' Letters," William and Mary Quarterly 17 (January 1960), pp. 78-85.

Whoever Caesar was, he adopted a tone almost certain to bring about the defeat of the Constitution. In an indignant and disdainful voice, he branded Governor Clinton a demagogue and his followers fools. After just two Caesar diatribes a more reasonable and persuasive voice rose in defense of the proposed Constitution--that of Publius.* On October 27, 1787, the first essay of Hamilton's most positive newspaper contribution was published in the New York Independent Journal. With the change from Caesar to Publius, "the controversy was abruptly transferred to another plane: from a name-calling brawl...it became a penetrating analysis of the proposed Constitution."²⁹ And so Hamilton, with the help of James Madison and John Jay, began the ambitious task of writing one of the most famous treatises on constitutional government: the Federalist Papers.

It is universally agreed that these essays are not only an American classic, but one of the greatest discussions of the principles of free government anywhere written and a great aid in interpreting the Constitution. What is relevant here is how much of an impact they had on the state legislatures of the time. The truth is that

*The original Publius Valerius was the hero who established a just republican government after the fall of the last king of Rome.

²⁹Miller, Hamilton, p. 188.

they made little difference to the early state conventions, since the early papers are less substantive and less controversial than the later ones. Five or six conventions had met and ratified the plan before the more specific, controversial aspects were dealt with.³⁰ But it seems fairly certain that the papers made a difference in the two states where ratification hung in the balance: in Virginia and New York. Hamilton was able to send copies of the completed text in book form to Madison in Virginia in May, 1788, where it served as a handbook for the cause--and won the day. In New York, Hamilton and his essays were responsible for achieving a narrow victory.

The Constitution was adopted and General Washington was sworn in as the first president. He chose Hamilton to be his Secretary of the Treasury. Given that position, one might think that Hamilton's contributions to the press would have abruptly disappeared. But in that position--and in fact he served more as a prime minister, he had so much authority in the first administration--he continued to write publicly, though still anonymously. Whether out of habit, or the lack of any equally gifted writer of Hamilton's political philosophy, he continued to take up his pen to defend his decisions and the measures adopted by the administration of which he was a part.

³⁰Miller, Hamilton, pp. 206-207.

Since he was a part of the first administration, there were no precedents to guide Hamilton on the propriety of writing his own press releases.

When, for instance, President Washington issued a proclamation of neutrality on April 19, 1793, toward both France and England, who had been at war since January, Hamilton took to the press to defend the action. It needed defending. Republicans were furious that the Congress had not been consulted (though it had not been in session). This gave Hamilton the opportunity to argue a point that seemed to him eminently clear: that the Constitution is full of implied powers, and that the general executive clause permits the broad use of power over the subsequent enumeration of presidential powers.

Choosing the pseudonym of Pacificus, between June 29 and July 20, 1793, Hamilton argued that America need not live up to any treaty obligations with France since she was the aggressor in an offensive war with England. Besides, he wrote, America had exaggerated the services of France during the Revolutionary War. Pacificus was stating a party line. The impact of the essays was significant, judging by the reaction of Hamilton's formidable political nemesis, Thomas Jefferson, who was Secretary of State at the time. Though unenthusiastically so, he had agreed to Washington's proclamation of neutrality. But he strongly

objected to Hamilton's use of the occasion to justify broad assumption of implied powers. He wrote to James Madison and, referring to "Col. H's" Pacificus essays, asked him to respond:

Nobody answers him, & his doctrines will therefore be taken for confessed. For God's sake, my dear Sir, take up your pen, select the most striking heresies and cut him to pieces in the face of the public. There is nobody else who can & will enter the lists with him.³¹

The next time the Secretary of the Treasury wrote publicly was as Tully in four essays addressed "To the People of the United States." Hamilton had imposed excise taxes on the whiskey distilled by frontiersmen from home-grown grain. In August, 1794, a minor rebellion broke out in Pennsylvania against the hated tax. This threat to governmental authority, as Hamilton interpreted the situation, gave him the excuse to test the strength of the federal government. On August 17 the government sent orders to the state governors of New Jersey, Pennsylvania, Maryland, and Virginia to call out 12,500 militiamen to be ready for a march on the farmers. "Since it was doubtful whether the militia would willingly respond to this order, Hamilton undertook to mobilize public opinion on the side

³¹"Letter to James Madison," July 7, 1793, The Works of Thomas Jefferson, ed. Paul Leicester Ford, vol. 7 (New York: G.P. Putnam's Sons, 1895), p. 436.

of the government."³² Hamilton's Tully essays were pep talks on respect for law, calling for the public's solid and complete support of the administration at all times, especially in times of crisis. Hamilton posed these rhetorical questions:

Shall the majority govern or be governed? shall the nation rule or be ruled? shall the general will prevail, or the will of a faction? shall there be government or no government? It is impossible to deny that this is the true and the whole question.³³

The true and whole question was not quite as simplistic as Hamilton perceived it. His questions were a bit too grand for a situation in which other, equally appropriate questions might be whether the tax was indeed fair, whether the farmers had a justifiable complaint, or whether the national government's authority was really being threatened.

Partly as a result of Tully's appeal, there was such a large enlistment of volunteers that the enlistment period was ended earlier than planned. Fortunately, the entire episode ended without serious incident.

A year later, in 1795, Hamilton rose to an occasion which needed a defense at least as much as the proposed Constitution had needed the Federalist essays. John Jay had gone to England and agreed to a treaty which was most

³²Miller, Hamilton, p. 407.

³³Works, vol. 6, pp. 414, 415.

unsatisfactory. He went even farther toward conciliating England than Hamilton would have preferred, for all his admiration of the British system of government. After some hesitation, however, he decided to support Jay's Treaty. Just as he had felt in the case of the Constitution, Jay's Treaty seemed to Hamilton to be better than nothing and worthy of defense on that ground. He viewed it as the very necessary first step of getting detente going with an old enemy and as a means of giving the new nation the necessary security it would need to be left alone. He wrote no fewer than thirty-eight letters as Camillus in defense of the treaty, at least eight of which were written together with Rufus King.³⁴ It is more than a little ironic that the first twenty-one essays were originally published by Thomas Greenleaf in the New York Argus, not only a Republican paper, but one which Hamilton was later to prosecute for libeling him.

The unpopular Jay Treaty was an even more difficult document to defend than the Constitution had been. Not only was it detested by the Republicans for being Anglo-philic, but it failed to please leading businessmen in Hamilton's own party. It is significant, then, that the effect of the Camillus pieces was as great and probably

³⁴Schachner, Hamilton, p. 350.

greater than that of the Publius essays. Camillus "made a tremendous impression on the country and did much to allay the agitation against the treaty."³⁵ One indication of Camillus' impact is another letter of Jefferson's to Madison. Again he urged Madison to answer his political antagonist:

Hamilton is really a colossus to the anti-republican party. Without numbers, he is an host within himselfIn truth, when he comes forward, there is nobody but yourself who can meet him....For god's sake take up your pen.³⁶

Coming from Jefferson, this was extraordinary praise indeed. And yet again Jefferson was to write Madison with a plea to answer Hamilton in the press. The third time occurred three years later, during the administration of President John Adams. It was an incredibly chaotic year, during which the country was gearing up for war with France at a frenetic pace. By this time Hamilton was no longer an official of the government. He was an embittered ex-Secretary of the Treasury, who still held great influence among a large number of Federalists.

Between March 10 and April 21, Hamilton wrote a series of seven articles called "The Stand" and signed

³⁵Schachner, Hamilton, p. 427.

³⁶"Letter to James Madison," September 21, 1795, The Writings of Thomas Jefferson, ed., Andrew A. Lipscomb and Albert E. Bergh, vol. 8 (Washington, D. C.: The Thomas Jefferson Memorial Association, 1903), pp. 192-193.

them Titus Manlius. The partisan Hamilton, eager to be divisive, was in full control as Titus Manlius. He dropped all diplomatic sensibility and became the same reckless exhorter to hate and passion that had governed his "Remarks on the Quebec Bill." His invective against France was bitter. He reviewed "the disgusting spectacle of the French Revolution" and found that "the attempt by the rulers of a nation to destroy all religious opinion, and to pervert a whole nation to atheism, is a phenomenon of profligacy reserved to consummate the infamy of the unprincipled reformers of France."³⁷ France was "a den of pillage and slaughter" and Frenchmen were "foul birds of prey." By the sixth piece in the series, Hamilton emotionally concluded:

The inevitable conclusion, from the facts which have been presented, is that revolutionary France has been & continues to be governed by a spirit of proselytism, conquest, domination, and rapine. The detail well justifies the position that we may have to contend at our very doors for our independence and liberty.³⁸

Hamilton's encouragement of war fever was particularly dishonorable because his motive was largely his desire to maintain a large and permanent standing army. An atmosphere of cold war was the best means to that end. So

³⁷Works, vol. 6, pp. 275, 277.

³⁸Works, vol. 6, p. 302.

strongly did he feel about the importance of a regular army, that he did not hesitate to contribute to the outpouring of propaganda against France. He did so even though "no one, including Hamilton, believed that France had the most remote notion of warring on the United States."³⁹

In response to the Titus Manlius series, Jefferson wrote Madison for the third time, his tone even more insistent than before:

You must, my dear Sir, take up your pen against this champion. You know the ingenuity of his talents; and there is not a person but yourself who can foil him. For heaven's sake, then, take up your pen, and do not desert the public cause altogether.⁴⁰

"The Stand" was to be Hamilton's last major press contribution, excepting his later sponsorship of the New York Evening Post. His public pieces nearly all had some impact. Each one further sealed his reputation as a writer to be reckoned with--one to be feared by his political opposition and one to be grateful for among his own party. Hamilton did not always use his talent for ennobling or wise purposes. He could write out of the emotions of prejudice and anger. When he did so, when he took the offensive, he was rarely at his best.

³⁹Bowers, Jefferson and Hamilton, p. 421.

⁴⁰"Letter to James Madison," April 5, 1798, Writings, vol. 10, p. 23.

On the attack he could be intolerant, divisive, partisan, and thoughtless, as witnessed in the "Remarks on the Quebec Act," as Publius on the offensive against Congressman Chase, and as Titus Manlius in stirring up the nation's fears and hatreds. But he was positively effective and helped to unify a revolutionary cause and a new nation in several other press contributions: in two early revolutionary pamphlets, as Phocion in defense of the Loyalists, as Publius in defense of the proposed Constitution, and as Camillus in defense of the Jay Treaty. Taken together, these pieces illustrate the theory that "he is far more admirable in defence than when he delivers the attack."⁴¹

As a public figure, Hamilton had been used both to the access he had to the press and also to the strong support of the Federalist press. But his party's press found itself in a weakened condition after the Federalists were badly beaten by the Republicans in 1800. Hamilton was dismayed by the lack of any really energetic newspaper of national circulation. He looked around for an editor and a journal which "could give leadership and tone to the whole Federalist press, for a sad lack of vigor was evident from Maine to Charleston."⁴²

⁴¹Oliver, Hamilton, p. 296.

⁴²Allan Nevins, The Evening Post: A Century of Journalism (New York: Boni and Liveright, Publishers, 1922), p. 12.

Several years earlier, in 1793, Hamilton had helped to provide the capital necessary to establish the Minerva, an administration mouthpiece in New York, edited by Noah Webster.⁴³ Now again, he contributed a sizeable sum and, "under a promise of reimbursement from future earnings, prominent Federalists were persuaded to contribute."⁴⁴ William Coleman was chosen as editor of the New York Evening Post, though the journal was often referred to as "Hamilton's gazette" or "Hamilton's journal." The best evidence of Hamilton's own contribution to the Post's columns comes from the autobiography of Jeremiah Mason-- a senator who once practiced law with Coleman. Coleman told Mason that Hamilton never wrote a word in the Post himself. But he assisted in the following way, in Coleman's words:

Whenever anything occurs on which I feel the want of information I state matters to him, sometimes a note; he appoints a time when I may see him, usually a late hour in the evening. He always keeps himself minutely informed on all political matters. As soon as I see him, he begins in a deliberate manner to dictate and I to note down in shorthand; when he stops, my article is completed.⁴⁵

In the first issue, dated November 16, 1801, the editor promised to support Federalism, but without partisan

⁴³Donald Stewart, The Opposition Press of the Federalist Period (Albany, N.Y.: State University of New York Press, 1969), p. 11.

⁴⁴Miller, Hamilton, p. 550.

⁴⁵Cited by Nevins, Post, pp. 25-26.

intolerance, announced "that honest and virtuous men are to be found in each party," and left the paper open to address by Republicans.⁴⁶ The first issue "struck a note of high-mindedness and dedication to principle which, in general, it succeeded in maintaining over its long career."⁴⁷

Hamilton was not to be part of that long career, for he did not live beyond 1804. But he can be credited with sponsoring the newspaper which gave the Federalists whatever cohesion they could manage after 1800. A weekly edition of the Post, named the Herald, was sent all over the country. "Enjoying a larger circulation than the Evening Post itself, the Herald served to keep alive the Federalist pretensions to be a national party."⁴⁸ Perhaps its influence lasted even longer in Hamilton's home town. "The Federalist party in the nation at large gradually crumbled away, but fortunately for the Evening Post, it remained powerful in New York city until near 1820."⁴⁹

⁴⁶Nevins, Post, p. 19.

⁴⁷Miller, Hamilton, p. 550.

⁴⁸Miller, Hamilton, p. 550.

⁴⁹Nevins, Post, p. 33.

II. HAMILTON WRITES HIMSELF OUT OF REPUTATION

Hamilton's sponsorship of the New York Evening Post reflects the fact that he came to discover the value of and necessity for a free press and not just those publications supportive of the party in power. Yet he showed very little enthusiasm for the opposition press when he was a public official. When Hamilton was criticized in the Republican press of the 1790s, he "too often acted as passion, rather than as reason, dictated. He was too apt to believe that he could overwhelm his enemies with a rhetorical onslaught, forgetting in his anger that it was at least as easy to write himself out of reputation as it was to destroy the good name of his adversary."⁵⁰ Writing himself out of reputation was exactly what he did in at least three episodes, the first being his involvement in a newspaper feud in Philadelphia.

In 1792 both the Federalists in power and their Republican competition were represented by newspapers, though the former had a distinct advantage in terms of numbers, financial support, and access to official reports. In 1790 there were about ninety papers, but the Republican

⁵⁰Miller, Hamilton, p. 352.

ones among them were outnumbered in the ratio of four to one until 1796. In Boston the Independent Chronicle of Thomas Adams was Republican in sympathy, but its competition was Benjamin Russell's Columbian Centinel, whose 4,000 circulation figure was the largest in the nation during the Federalist period.⁵¹ Of the twelve Philadelphia papers, two were Republican in sentiment, though not very forcefully so: Benjamin Franklin Bache's Pennsylvania Daily Advertiser (later to become effective as the Aurora) and John Dunlap's American Daily Advertiser.

The most powerful paper in Philadelphia, and the only national one, was John Fenno's Gazette of the United States, begun in 1789 and transported to the new capital from New York when the administration relocated. Fenno was a great admirer of President Washington's Federalist administration. Supported by the large government printing contracts, Fenno's Gazette was the organ through which the administration's policies were communicated in a favorable way. Fenno admitted to being a party mouthpiece: he said the paper's purpose was "to hold up the people's own government in a favorable point of light-- and...by every exertion, to endear the general government to the people."⁵²

⁵¹Stewart, Opposition Press, pp. 15, 17, 622.

⁵²Gazette of the United States, April 27, 1791.

A thirteenth Philadelphia paper, and an unlucky one for the Federalists, was soon to appear. Then Secretary of State, Thomas Jefferson hoped for a newspaper of comparable circulation and influence with Fenno's Gazette to articulate the Republican positions. James Madison was also eager to see a Republican paper established and brought the name of Philip Freneau to Jefferson's attention. Madison had roomed with Freneau at Princeton and could highly recommend his friend's literary talents as well as his democratic zeal.

Jefferson wrote Freneau when a position in the State Department became available. He offered the post of clerk of foreign languages, for \$250 a year, acknowledging the low pay but broadly hinting that the minimum amount of time required for the job would not interfere with any other activity the editor might have in mind. But Freneau turned the offer down. He had been planning to establish a paper in New Jersey and did not want to let his committed subscribers down. He was also awaiting the birth of his first child, and perhaps he felt his knowledge of French alone did not qualify him for the position.

Madison was not put off, however, and tried to persuade Freneau to reconsider during the spring. Again the editor decided against the venture. Jefferson was genuinely sorry. He wrote a friend that "we have been trying to get another weekly or half-weekly set up...

so that it might go through the States and furnish a whig vehicle of intelligence. We hoped at one time to have persuaded Freneau to set up here, but failed."⁵³ A third attempt was made to persuade Freneau to come to Philadelphia and possibly a fourth.⁵⁴ When Freneau at last agreed, he did so because he had arranged for a firm financial base for a Philadelphia paper with publishers John Swaine and Francis Childs. Swaine and Childs, with whom Freneau had worked at the New York Daily Advertiser, agreed to accept any losses, while Freneau was guaranteed one third of any profits.

This brief history of the genesis of the National Gazette, as Freneau was to name his paper, indicates that the State Department position of clerk played a minor role in Freneau's decision. The \$250 was probably "more bait than anchor."⁵⁵

The first issue of the National Gazette, which appeared on October 31, 1791, left no doubt about who was responsible for its content: Freneau's name stood out at the top in large, bold type. Its proposals promised a thorough,

⁵³"Letter to Edmund Randolph," May 15, 1792; cited by Harry H. Clark, Introduction to Poems of Freneau (New York: Harcourt, Brace and Company, 1929), p. 22.

⁵⁴See Philip M. Marsh, Philip Freneau: Poet and Journalist (Minneapolis: Dillon Press, 1967), p. 142, and Jacob Axelrad, Philip Freneau: Champion of Democracy (Austin: University of Texas Press, 1967), p. 206.

⁵⁵Axelrad, Champion of Democracy, p. 204.

well-balanced, and patriotic paper. There was to be complete domestic news, entertainment, coverage of the legislature, and foreign news collected from British, French, and Dutch newspapers. Also promised were "such essays as have a tendency to promote the general interest of the Union."⁵⁶

Such a proposal sounded circumspect enough. No one, including Freneau, could have anticipated the degree of antagonism the paper was soon to elicit from two Federalists--Hamilton and his favored editor, Fenno. The first months' issues appeared to be bipartisan. There were essays by libertarians Thomas Paine, on the establishment of a mint, and Robespierre, on press freedom, but there was also Hamilton's Report on Manufactures, published in five successive issues without editorial comment. Soon, however, the National Gazette's sympathies became more evident in columns that denounced displays of nobility and wealth and that criticized the funding system and taxes and almost anything Hamilton did.

By 1792 the National Gazette's issues began to alarm Hamilton and Fenno. Freneau suggested that "nothing but the perpetual jealousy of the governed has ever been found

⁵⁶National Gazette, October 31, 1791. Further references will be dated in the narrative.

effectual against the machinations of ambition" (January 16). While the people should of course be loyal to the government's authority, he wrote, they should be loyal only "as delineated in the great charters, derived not from the usurped power of kings, but from the legitimate authority of the people" (January 19). In the same issue, in an essay on nobility, the analogy was made that "the downfall of Nobility in France has operated like an early frost towards killing the germ of it in America." Next, Freneau was so bold as to suggest that distinct parties might be a healthy element for a republican form of government in that they could serve as mutual checks (January 23). These statements challenged the basic assumptions held by Washington's Federalist administration and they irritated Hamilton considerably.

The National Gazette stepped up its criticism. In March "A Farmer" attacked the aristocratic appearance of the administration and "Brutus" began a series of attacks on the funding system. In the spring, "Sidney" continued the attacks on Hamilton's actions as Secretary of the Treasury, particularly against the hated whiskey tax.

In defense of his cherished Secretary, Fenno tried to crush the democratic talk issuing from his new rival. But he was no match for Freneau's satire and, worse, he often played into his competition's hands. When, for

instance, he accused the National Gazette of being supported by a faction,⁵⁷ Freneau could respond that this was certainly true if a faction meant "a very respectable number of anti-aristocratical and anti-monarchical people of the United States" (June 21). When Fenno chauvinistically suggested that "a majority of [the abusers of government] are persons from other countries who having lately escaped from bondage, know not how to enjoy liberty,"⁵⁸ Freneau took advantage of reaching the large foreign-born population. He reported Fenno's opinion: "that you foreigners are a set of rebellious turbulent dogs" (June 11). Fenno gave Freneau still another piece of bait by suggesting that "a king at the head of a nation to whom all men of property cling...is able to crush the first rising against the laws."⁵⁹ To have the administration's own mouthpiece speak of the superiority of a king was tremendous grist for Freneau's libertarian mill.

Of all his favorite objects of attack, "it was Freneau's particular delight to rake Hamilton over the coals and to watch his reputation go up in smoke."⁶⁰ The Secretary of

⁵⁷Gazette of the United States, June 20, 1792.

⁵⁸Gazette of the United States, June 9, 1792.

⁵⁹Gazette of the United States, June 6, 1792.

⁶⁰Miller, Hamilton, p. 344.

the Treasury had been watching the journalistic battle carefully. The many accusations against his national funding system had damaged his reputation and had outraged the sensitive Hamilton. And since he was not satisfied with Fenno's ability to answer Freneau adequately, he entered the press war personally, and as anonymously as ever.

There is no doubt that Hamilton genuinely believed the National Gazette was a threat to the stability and authority of the national government, always his main concern. He wrote Vice-President John Adams of his suspicions. "If you have seen some of the last numbers of the National Gazette," he wrote, "you will have perceived that the plot thickens, and that something very like a serious design to subvert the government discloses itself."⁶¹ Hamilton suspected that Jefferson himself was trying to discredit him and his measures through the pages of the National Gazette. Perhaps he underestimated Freneau's ability or the degree of his democratic passion. Perhaps he put himself in Jefferson's place and concluded that he would have contributed to the paper. At any rate, he suspected that his political archrival was at least dictating, if not writing, opinions for Freneau's paper.

⁶¹"Letter to John Adams," June 25, 1792, The Works of John Adams, ed., Charles Francis Adams, vol. 8 (Boston: Little, Brown and Company, 1853), p. 514.

With elections approaching in the fall, Hamilton felt compelled to stem the influence of the Republican journal by discrediting it. He knew of Freneau's clerkship in the State Department and sought information about the origin of the National Gazette. He asked a friend to do a little private investigating, supposedly for a mysterious third party. Hamilton must have learned of Madison's talks with Freneau, since he later contacted his friend for further information. "You will oblige me," he wrote Elias Boudinot, "by forwarding to me without delay the particulars of all the steps taken by Mr. Madison--the when and the where--and with liberty to use the name of the informant. His affidavit to the facts, if obtainable, would be of infinite value."⁶² Who the informant was is not clear, but Hamilton must have had all the facts he needed when he wrote Colonel Edward Carrington in May that "it is reduced to a certainty that [Freneau] was brought to Philadelphia by Mr. Jefferson to be the conductor of a newspaper."⁶³

With his circumstantial case in hand, Hamilton set out to expose Freneau as a hired character assassin and

⁶²"Letter to Elias Boudinot," August 13, 1792, Works, vol. 10, p. 14.

⁶³"Letter to Edward Carrington," May 26, 1792, Works, vol. 9, p. 519

his newspaper as Jefferson's own weapon. He chose the initials "T. L." for his first challenge to the credibility of the National Gazette, which ran in the Gazette of the United States as follows:

The editor of the National Gazette receives a salary from government.

Quere--Whether this salary is paid him for translations, or for publications, the design of which is to villify those to whom the voice of the people has committed the administration of our public affairs--to oppose the measures of government, and, by false insinuations, to disturb the public peace?

In common life it is thought ungrateful for a man to bite the hand that puts bread in his mouth; but if the man is hired to do it, the case is altered.⁶⁴

Freneau was glad to reprint the challenge immediately, in his July 28 issue. He assumed Fenno was behind the challenge. After calling the inquiry "beneath reply," he went on to ask a question of his own. How much, he asked, could the small stipend for translating work influence him? Could it compare with the emoluments that Fenno received as government printer? It was true that Fenno profited ten times more by the government than Freneau. As official printer, he received about \$2,500 a year.

A week later Hamilton appeared again, this time as "An American," and this time naming Jefferson as a pensioner

⁶⁴Gazette of the United States, July 25, 1792, in Works, vol. 7, p. 229.

of the National Gazette and dismissing Freneau as "the faithful and devoted servant of the head of a party, from whose hands he receives the boon."⁶⁵ He went on to accuse Jefferson of having opposed important features of the Constitution when he was in France, absurd charges which he later could not document.

At this, Freneau began to suspect the identity of the author. He went to the Philadelphia mayor and swore to an affidavit which he sent to Fenno's Gazette on August 8. He swore that no negotiations had been conducted with Jefferson for the establishment of a newspaper, which was technically true, and that he was never advised, influenced, or directed by the Secretary of State.

Not surprisingly, this affidavit did not satisfy Hamilton, who again appeared as "An American." This time he leaked more of his information. He said that Freneau might be correct about not having negotiated with Jefferson, but that arrangements had been made by a friend on behalf of the secretary. He also suggested that Freneau could not possibly know where every unsolicited article for his paper originated. He called the connection between the editor and the head of a department "indelicate and unfit."⁶⁶

⁶⁵Gazette of the United States, August 4, 1792, in Works, vol. 7, p. 230.

⁶⁶Gazette of the United States, August 11, 1792, in Works, vol. 7, p. 236.

Once again Freneau offered a response to Hamilton's charges. Again he asked whether the small sum of \$250 could influence an editor, especially since he had to personally pay for translations in German, Swedish, and Spanish out of his meager salary as translator. He said it was the 1,300 subscriptions from honest and independent citizens which alone supported the National Gazette.

At this point President Washington, increasingly alarmed by the hostile atmosphere within his cabinet, attempted to still the battle. He wrote essentially the same plea for harmony to each of his cabinet members. He reminded Jefferson that "internal dissensions [are] harrowing and tearing our vitals," and expressed the hope to Hamilton that "liberal allowances will be made for the political opinions of each other; and instead of those wounding suspicions, and irritating charges, with which some of our Gazettes are so strongly impregnated...that there might be mutual forbearances and temporizing yieldings on all sides."⁶⁷ It is interesting that he mentioned the gazettes only in the letter to Hamilton, suggesting that he knew of the Treasury Secretary's direct contribution to the public feud.

⁶⁷"Letter to the Secretary of State," August 23, 1792, and "Letter to the Secretary of the Treasury," August 26, 1792, The Writings of George Washington, ed., John C. Fitzpatrick, vol. 32 (Washington: Government Printing Office, 1939), pp. 130, 133.

Both cabinet officers responded to Washington's appeal by offering to resign, though it is likely that each hoped for the other's resignation. Hamilton admitted to having "some instrumentality of late in the retaliations which have fallen upon certain public characters," but found himself unable "to recede for the present."⁶⁸ In his detailed reply, Jefferson admitted that he had procured subscriptions for Freneau's gazette and had supplied him with the Dutch Leyden Gazette as an additional news source. But beyond that, he wrote, the rivalry between the two papers did not concern him--a fairly transparent exaggeration. He swore that he had never written or solicited a single sentence for any gazette, and questioned the dignity and decency of a government whose minister lowers himself into a press war as an anonymous writer.⁶⁹

Washington achieved at least a diminished degree of public hostility between his secretaries. But the conflict continued in the papers. Hamilton wrote six further pieces in the Gazette of the United States, variously as "Catallus," "Scourge," and "Metellus." Throughout the period of Hamilton's offensive, Jefferson did not say a word publicly in his defense. As a result of his silence, Hamilton became exasperated and "his tone became progressively

⁶⁸"Letter to Washington," September 9, 1792, Works, vol. 7, p. 304.

⁶⁹"Letter to Washington," September 9, 1792, Writings, vol. 8, pp. 403ff.

more shrill and his allegations more extravagant as the dispute went on."⁷⁰

What defenses Jefferson made were in private correspondence, not only to Washington, but to friends, to whom he confided that he had resolved "never to write without subscribing my name" and "never to put a sentence into any newspaper."⁷¹ Jefferson did not lack defenders, however. Besides Freneau's disclaimer, support came in the form of letters to the National Gazette and from the Boston Independent Chronicle, which was carrying on a miniature battle with the Federalist Columbian Centinel. But the strongest defense of all came in a series of unsigned essays which first appeared in Dunlap's Daily American Advertiser and were reprinted in the Gazette of the United States between September 26 and January 5, 1793. The work of James Monroe, with the help of Madison, these six articles were careful replies to Hamilton's charges. While few Republicans could match Hamilton's skill with words, as Jefferson had pointed out several times, Monroe was the winner of this debate. He had an advantage in the form of Jefferson's correspondence to Madison from France.

⁷⁰Miller, Hamilton, p. 347.

⁷¹"Letter to Edmund Randolph, September 17, 1792, Writings, vol. 8, p. 411, and "Letter to Samuel Harrison Smith," August 22, 1792, Writings, vol. 14, p. 58.

When the Treasury Secretary tried to put words in Jefferson's mouth, Monroe could quote him exactly. Hamilton's charge that Jefferson had opposed the Constitution could not stand up to Monroe's thorough and documented refutations. "At last, well cornered, and practically exposed as the Secretary of the Treasury," 'Catallus' gave up the struggle and refused to answer."⁷² So the Republicans had the last word. Hamilton was silenced.

He had shown dramatically that "in attack he had a tendency to get too much heated; to hit too hard and too promiscuosuly; to rely too much on his muscles, too little on his eyes."⁷³ Not only had Hamilton's original purpose in writing been obscured, if not even reversed--he had intended to discredit the Republicans before the elections--but he had contributed to a development that alarmed him: the beginning of the two-party system as we know it. Most historians agree that the Republican party began to organize in 1792. The National Gazette made a contribution to its

⁷²Philip M. Marsh, "Madison's Defense of Freneau," William and Mary Quarterly, ser. 3 (April 1946): 271.

⁷³Oliver, Hamilton, p. 297.

⁷⁴See Noble E. Cunningham, Jr., The Jeffersonian Republicans: The Formation of Party Organization (Chapel Hill: University of North Carolina Press, 1957), p. 49; Alexander De Conde, Entangling Alliance: Politics and Diplomacy under George Washington (Durham, N. C.: Duke University Press, 1958), p. 61; and Miller, Federalist Era: 1789-1801 (New York: Harper and Row, 1960), p. 99.

consolidation, among many other sources of impetus. And Hamilton also did his part. Freneau could not have championed a cause unless there was at least one visible villain to buck. Hamilton made himself vulnerable.

By the fall elections of 1792, voters had a choice. While John Adams retained the vice-presidency, the Republicans won five states and a majority in the House.⁷⁵ Republican newspapers continued to multiply and had a great deal to do with the final victory of Jefferson in 1800 and the subsequent disappearance of the Federalists.

And so, unwittingly, Hamilton had contributed to the healthy rise of the two-party system in America. The notion of parties so horrified him that if he had it to do over, he surely would have restrained himself from entering the public feuding between the gazettes. Perhaps, though, he could not have. He never learned to steel himself against public comment, to learn to live with newspaper commentary of all varieties. In his involvement in the gazette war and elsewhere, he "revealed a sensitivity to such abuse that seriously handicapped his career in American politics," and "a temperamental weakness that was to destroy his leadership."⁷⁶ Of course "he would have

⁷⁵See De Conde, Entangling Alliance, p. 62 and Lewis Leary, That Rascal Freneau (New Brunswick: Rutgers University Press, 1941), p. 221.

⁷⁶Miller, Hamilton, p. 345, and Bowers, Jefferson and Hamilton, p. 168.

been wiser--but less human--had he accepted this denigration as one of the inevitable concomitants of political office," wrote John C. Miller, who suggested that one reason for Hamilton's inability to develop a tough skin was that "he carried into political life the ethics and the punctilio of the military man, and he never fully realized that they were out of place in the nether world of politics in which he had cast his lot."⁷⁷

Hamilton was to repeat his mistake several years later. In the presidential campaign of 1800, when once again he believed that he could overwhelm his enemies with a rhetorical onslaught, he only succeeded in damaging his reputation and severely injuring the Federalist Party's reputation. He did so by publicly attacking President John Adams.

Hamilton had long since fallen out with President Adams on a number of issues, particularly that of war with France which Adams had been able to avoid. By so doing, he had in effect eliminated Hamilton's excuse to form a permanent standing army, one of his lifelong priorities that had not been achieved when he was part of Washington's administration. Hamilton entertained thoughts of publicly criticizing Adams when he wrote to Oliver Wolcott in the summer of 1800. "I have serious thoughts of giving to the public my opinion respecting Mr. Adams, with my reasons, in a letter to a friend, with my signature," he

⁷⁷Miller, Hamilton, p. 345.

wrote. "This seems to me the most authentic way of conveying the information, and best suited to the plain dealing of my character."⁷⁸ A month and a half later, after giving the idea more thought, he again wrote Wolcott:

Decorum may not permit going into the newspapers, but the letter may be addressed to so many respectable men of influence as may give its contents general circulation.

What say you to the measure? Anonymous publications can now effect nothing.⁷⁹

It is interesting that Hamilton concluded as he did, he who had long been such an effective anonymous writer. Perhaps Hamilton found himself in somewhat of a dilemma: while he wanted to make a bold statement and put his name to it, he was unwilling to do so in the newspapers, convincing himself that decorum would not allow it. He decided to write his critical assessment of Adams, have copies printed, and send it to leading Federalists all over the country. So he sat down and wrote his opinion of "The Public Conduct and Character of John Adams, Esq., President of the United States."

It was a severely derogatory characterization of President Adams. His thesis sentence was that "he does

⁷⁸"Letter to Oliver Wolcott," August 3, 1800, Works vol. 10, p. 383.

⁷⁹"Letter to Oliver Wolcott," September 26, 1800, Works, vol. 10, p. 390.

not possess the talents adapted to the administration of government, and that there are great and intrinsic defects in his character."⁸⁰ He went on at length about the inept way Adams had handled the foreign policy crisis he faced with France, castigating him for making the first gesture toward a resumption of normal relations. But his complaint against Adams emerged as a purely personal one. He claimed that Adams had abused him verbally by calling him the leader of a British faction, and had further insulted him by not even responding to his two letters, written to clear his name against the charge.

The essay was a vicious attack on Adams the man as well as on Adams the diplomat and president. Hamilton's motivation in writing the piece was most likely a selfish one, made transparent by his surprise ending. After venting his spleen, he concluded that he would not recommend the withholding of a single vote from Adams. Apparently no fruitful purpose was even intended. Rather, an embittered Hamilton felt the need to air a private antagonism.

He sent his essay to the editor of the New York Gazette for printing before sending copies to leading Federalists. But Aaron Burr intercepted a copy of the document and sent it off to the Aurora and the New London

⁸⁰Works, vol. 7, pp. 310-311.

Bee.⁸¹ It actually appeared in the Republican press before some of the Federalists had even received their copies. The damage done was considerable. The split in the Federalist Party, made wider now, was exposed for all to see. Hamilton's public attack on Adams not only crushed the last Federalist hope of a victory against the Republicans, but it also diminished his own reputation. He was never again to command the attention of his party as he once had. "Democrats exulted in the disservice Hamilton had done his party and himself."⁸²

Hamilton apparently had no regrets about what he had done. Perhaps he did not realize for a long time, if ever, the extent of the damage done by his public exposure of inner-party struggle in an election year. He actually considered writing a second essay, as if he "was feeding his defiance," or as if writing "under an obsession that adjourned his judgment and blotted out his own vulnerability."⁸³ He wrote his friend Timothy Pickering:

You no doubt have seen my pamphlet respecting the conduct and character of President Adams. The press teems with replies, and I may finally think it expedient to publish a second time.⁸⁴

⁸¹Bowers, Jefferson and Hamilton, p. 478.

⁸²Broadus Mitchell, Alexander Hamilton: The National Adventure: 1788-1804 (New York: The Macmillan Company, 1962), p. 485.

⁸³Mitchell, National Adventure, pp. 485, 487.

⁸⁴"Letter to Timothy Pickering," November 13, 1800, Works, vol. 10, p. 391.

What he thought he might accomplish through a second essay, only Hamilton knew. He may have considered it expedient to publish a second time until he realized how little respect expediency had brought him on his first effort.

There is an ironic footnote to this episode, little known or repeated. In 1798, Republican editors were fined and imprisoned for expressing critical opinions of President Adams--far less derogatory than those in Hamilton's pamphlet. One of the victims of the Sedition Law, Thomas Cooper, decided it would be interesting to charge Hamilton now with seditious libel, since he was surely guilty of violating the Sedition Law. Cooper, who had served six months for libeling Adams, wrote Hamilton to ask whether he were indeed the author of the seditious attack on Adams. Hamilton did not reply. And since Adams paid no attention to the incident, Cooper dropped his threatened charge before anything came of it. But at least his exposure of the clearly partisan Sedition Law was recorded in history.⁸⁵

The pamphlet attack on Adams, like the attack on Jefferson in the Gazette of the United States, is a striking example of Hamilton's tendency toward a self-destructive rhetorical onslaught. In both instances he damaged his reputation and that of his party more than he

⁸⁵See Dumas Malone, "The Threatened Prosecution of Alexander Hamilton under the Sedition Act by Thomas Cooper," American Historical Review 29 (1923-1924): 76-81.

furthered them. In both cases he was divisive. His attack on Jefferson in the Gazette speeded the formation of a formidable opposition party. His "astonishing attack on President John Adams left Hamilton a party leader without a following."⁸⁶ In both of these offensives, too, Hamilton seems to have overreacted out of an exaggerated pride, a pride which made him feel persecuted. Hamilton revealed that trait in a third episode which hurt his reputation--this time more personally than politically. It is in the famous case of the Reynolds Affair that Hamilton hurt himself and his family more than anyone else.

In 1797, an unprincipled journalist named James T. Callender published the "Historical Memoirs of the United States, for the Year 1796," in which he raised the question of whether Hamilton had speculated unethically as Secretary of the Treasury. The charges were not new to Hamilton, but he thought they had been answered satisfactorily years earlier. At that time three Congressmen--Abraham Venable, James Monroe, and Frederick Muhlenberg--had approached Hamilton and asked him to explain why he was involved in making payments to a James Reynolds. They had evidence in the form of written notes that Hamilton was slipping Reynolds money for some unknown purpose. Hamilton then had made a full confession of his adultery with Reynolds'

⁸⁶Richard B. Morris, ed., Alexander Hamilton and the Founding of the Nation (New York: The Dial Press, 1957), p. xii.

wife and subsequent blackmail by the couple, a result they had carefully plotted all along.

When Callender published the same circumstantial evidence that the three congressmen had originally produced, Hamilton felt compelled to clear his public honor of the charge of speculation, a charge which the Republican press was eagerly picking up on. To do so he chose to sacrifice his private reputation. He was able to clear himself of any appearance of unethical involvement, he thought, by publishing the Reynolds' letters to him, both the wife's invitations and the husband's demands for money. So on August 31, 1797, he told all to everyone in the form of "Observations on Certain Documents, Contained in No. V and VI of 'The History of the United States for the Year 1796' in which the Charge of Speculation against Alexander Hamilton, late Secretary of the Treasury, is fully refuted. Written by himself." Its title was hardly suggestive, but the confessions inside were complete. As could be expected, he suffered through a good deal of Republican wise cracking and, worse, disbelief. "By confessing his adultery, Hamilton persuaded few Republicans that he was innocent of financial wrongdoing."⁸⁷

Hamilton's defense of himself is particularly revealing in its opening section. It shows him to be a bitter and

⁸⁷Miller, Hamilton, p. 463.

resentful man, convinced that the press had treated him shabbily. It is true that Callender's charges against him had been unfair and unearned, for he had been scrupulously honest as Secretary of the Treasury. But for him to strike out at an entire portion of the press which was not Federalist in sympathy was also an injustice. His rage and bitterness were never more forcefully stated:

[Republican] newspapers continually ring with odious insinuations and charges against many of our most virtuous citizens; but, not satisfied with this, a measure now in this country has been lately adopted to give greater efficacy to the system of defamation--periodical pamphlets issue from the same presses, full freighted with misrepresentation and falsehood....

How then can I...expect to escape? And if truly this be, as every appearance indicates, a conspiracy of vice against virtue, ought I not rather to be flattered, that I have been so long and so peculiarly an object of persecution? Ought I to regret, if there be any thing about me so formidable to the FACTION as to have made me worthy to be distinguished by the plenitude of its rancor and venom?

It is certain that I have had a pretty copious experience of its malignity. For the honor of human nature, it is to be hoped that the examples are not numerous of men so greatly calumniated and persecuted as I have been, with so little cause.⁸⁸

Once again, Hamilton proved himself to be too sensitive to ever ignore the criticism of his political opponents. Criticism in the Republican press was the one sure thing to make him act out of emotion rather than reason. Public retaliation with his pen never really made matters better and usually made them worse. He never learned when to keep quiet.

⁸⁸Works, vol. 7, pp. 372-373.

III. HAMILTON EARNS TWO REPUTATIONS: OPPONENT AND DEFENDER OF THE FREE PRESS

In the second to last of the Federalist Papers, Hamilton attempted to justify the absence of a constitutional bill of rights. He argued that a bill of rights was unnecessary to the Constitution, and impractical.

"Why," asked Hamilton, "declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?"⁸⁹

Hamilton's rhetorical questions were not entirely honest since he plainly believed that the federal government could adopt powers and enact legislation when it deemed necessary, regardless of the delineated areas of authority granted by the Constitution. He always considered the Constitution a guideline, and never an absolute limitation upon federal powers. The answer to the questions he posed is that without the First Amendment, the government would indeed try to restrain the press. Even with the amendment, the Federalist administration of John Adams thought it

⁸⁹The Federalist Papers 84 (New York: New American Library, A Mentor Book, 1961), pp. 513-514.

perfectly valid to adopt measures which it was not constitutionally empowered to adopt, dramatically and undemocratically so in the passage of the Sedition Law.

Hamilton went on to argue that the free press amendment of the proposed bill of rights was impractical because impossible to define. He asked who could give the liberty of the press "any definition which would not leave the utmost latitude for evasion? I hold it to be impracticable; and from this I infer that its security, whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government."⁹⁰

Hamilton's perception has in fact been borne out over the course of American history. The free press concept has necessarily had to be flexible, changing with time and circumstances. Whether for good or ill, the First Amendment has been expanded and narrowed throughout its history, as the courts have reflected the general spirit of the people.

Hamilton was also right about the difficulty of defining press liberty. After all, no one has yet come up with a definition to meet everyone's satisfaction and

⁹⁰The Federalist Papers 84, p. 514.

to cover all occasions. Courts at all levels continue to reexamine and refine the amendment and its implications.

Despite Hamilton's arguments, the First Amendment was added to the Constitution, and it remained for the leaders of the 1790s to define the meaning of press liberty and, more specifically, the role of an opposition press and public criticism in a democracy. Hamilton's role in the shaping of attitudes toward the press has been variously interpreted. Some have condemned him as a man who stood ready to suppress press liberty, while others have credited him with being among the great defenders of press freedom.

Some biographers have based their judgments on just one or two episodes of Hamilton's life, while others have based their conclusions on his last word on the subject of the press. Among his discreditors are several Jefferson biographers who have been particularly eager to contrast their libertarian with his foil. And Hamilton has been linked by association with the repressive measures instituted against the press by the Adams administration. It is often assumed that Hamilton was the author of every Federalist measure during the 1790s. Hamilton himself is largely responsible for the diverse opinions, since his attitudes toward the press were not entirely consistent nor predictable.

Because there is no unanimity of opinion about Hamilton's final place with regard to the liberty of the press in America, it is helpful to study three crucial episodes during Hamilton's last six years, from 1798 to 1804: the passage of a federal Sedition Law; Hamilton's prosecution of a Republican editor under common libel law; and his defense of a Federalist newspaper, also charged under common libel law. Taken together, the three episodes show that Hamilton has earned both criticism and praise for his First Amendment attitudes. And while certain contradictions are evident in his words and actions, there is also a common thread running between his earlier and later statements.

While Hamilton questioned the need for the First Amendment on the grounds that it was unnecessary and impractical, he certainly never questioned the concept of a free press in America. In general, he seems to have been in the mainstream of eighteenth-century thought, which accepted the British understanding of press freedom as defined by William Blackstone. The liberty of the press, according to Blackstone, "consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published." In short, Blackstone said, a free man can publish what he will. "But if he publishes what is improper, mischievous,

or illegal, he must take the consequences of his own temerity."⁹¹

Federalists and Republicans alike accepted the Blackstonian concept of press liberty: that material critical of the government was seditious libel and needed to be checked. The two parties differed as to where the authority for censoring improper, mischievous, or illegal words should be lodged, whether in the states or federal government. But apparently, before 1798, there was "no dissent from the proposition that the punishment of a seditious libeler did not abridge the proper or lawful freedom of the press."⁹² Indeed, the only time the Blackstonian concept was questioned prior to 1798 was in the famous trial of John Peter Zenger in 1735.

Zenger was a printer charged with seditious libel under the common law, which embodied the Blackstonian understanding of libel. Under this common law, the truth of the offending words could not be offered as a defense, nor could the jury decide the law or the content of the offending words, but only the fact of publication. In the Zenger case, Andrew Hamilton argued that a defendant charged with seditious libel should be given the right to plead

⁹¹Commentaries on the Laws of England, 18th ed., vol. 2 (New York, 1836), pp. 112-113; cited by Leonard Levy, "Liberty and the First Amendment: 1790-1800," American Historical Review 68 (October 1962): 23n.

⁹²Levy, "Liberty and the First Amendment," p. 27.

truth as a defense and that the jury should determine both the law and the fact.

Zenger's jury courageously found him innocent, against the instruction of the court which asked the jury merely to decide whether Zenger had printed the offending words. But such a libertarian interpretation of the First Amendment, with its double protection against charges of seditious libel, was not incorporated into law for another sixty-three years, and then only temporarily--and ironically--in the enactment of a federal Sedition Law.

The Sedition Law was adopted by the Adams administration during the summer of 1798 when war with France seemed a distinct possibility. The Federalist administration feared and hated the loosening of democratic sensibilities in France and felt more comfortable with a British alliance. The opposition party of Republicans, on the other hand, felt great sympathy for the democratic revolution in France and antipathy for the British. The Republican press was sharply critical of Adams' policies, particularly his allowance of a standing army in preparation for war with France. Since Hamilton was appointed acting general of that army, he became the butt of much of the opposition press criticism.

The recourse available to the administration and to Hamilton in dealing with critical commentary in the Republican press was access to the common libel law. But

the administration felt it needed stronger measures to still the opposition, which it considered a threat to the peace and security of the new nation and to the dignity and authority of the government. The summer of 1798 was considered by the Adams administration to be a period of national emergency and criticism was considered so dangerous as to be tantamount to treason.

Further, the Federalists claimed the right to enact a federal Sedition Law on the grounds that the First Amendment had never protected the licentiousness of the press, that seditious libel was naturally not protected under the amendment. It seemed eminently clear to them that particularly during a national emergency, criticism of government policies and men could not be tolerated. For the general welfare and security of the Republic, it was not only constitutionally valid, but imperative to act.

Hamilton, who retained his influence in shaping and interpreting the Constitution even after his 1795 resignation as Secretary of the Treasury, could agree with this reasoning. He had devoted his public life to secure the strongest possible federal government, even where that meant sacrificing individual civil liberties.

Yet, when the sedition bill was originally proposed, Hamilton was immediately displeased with it. His displeasure with the bill, communicated to Secretary of the

Treasury Oliver Wolcott, has been misunderstood and inaccurately used by some historians as the basis for absolving him of any support of the final Sedition Law. But in fact, Hamilton only disapproved of the proposed sedition bill in its original, most repressive form.

Its original form, as proposed by General James Lloyd of Maryland, was so harsh that it was distasteful to many of his fellow Federalists. Called "A Bill to define more particularly the crime of Treason, and to define and punish the crime of Sedition," its first section was practically a declaration of war on France and suggested the death penalty for any person giving aid and comfort to the enemy. The second section made knowledge of treasonous acts a crime of treason. The third section forbade criticism of any measure of the United States and expressions against any public officer which would damage his character. The fourth section added that any material which tended "to induce a belief in the citizens" that the government "in enacting any law, was induced so to do by motives hostile to the constitution," or tended "to justify the hostile conduct of the French government," or any defamation of the President or any court, would result in a fine and an imprisonment.⁹³

⁹³The Debates and Proceedings in the Congress of the United States (Annals of Congress), 5th Congress, vol. 2 (Washington: Gales and Seaton, 1851), p. 2093.

A Senate committee reviewed Lloyd's bill and significantly revised it, striking completely the first two sections and the references to France and the death penalty. But Hamilton had not seen the revision when he dashed off his letter to Wolcott, warning that some of the bill's provisions "appear to me highly exceptionable," such that "may endanger civil war." He added what has since been quoted as the definite statement of Hamilton's attitude toward the Sedition Law. He was later to have more to say on the subject, but it is the following words which have stuck to Hamilton's reputation:

I hope sincerely the thing may not be hurried through. Let us not establish a tyranny. Energy is a very different thing from violence....If we push things to an extreme, we shall then give to faction body and solidarity.⁹⁴

His objection to the sedition bill, as here expressed, was not founded on constitutional or libertarian grounds. Rather, his concern with the bill was politically motivated. As one of the best scholars of the Sedition Law concluded: "Fearing that the vigorous measure would make the Republicans martyrs to an obviously tyrannical act, he objected to it solely because he considered it to be politically inexpedient."⁹⁵

⁹⁴"Letter to Oliver Wolcott," June 29, 1798, Works, vol. 10, p. 295.

⁹⁵James M. Smith, Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties (Ithaca, N. Y.: Cornell University Press, 1956), p. 109.

When the Senate bill reached the House, Federalists there again altered the bill, and this time drastically. They went so far as to write in the conditions which had been suggested by Andrew Hamilton at the Zenger trial. They declared:

That if any person shall be prosecuted under this act, for the writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defense, the truth of the matter contained in the publication charged as a libel. And the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases.⁹⁶

As written, then, and passed by a vote of 44 to 41, the federal Sedition Law guaranteed to journalists safeguards that could not be had under common libel law. It is one of the great ironies of the period that Federalist congressmen wrote in the double protection against libel charges. "The procedural safeguards were probably the best the Republicans could manage (and in truth they incorporated most of the libertarian thinking of the day)."⁹⁷

Of course, as exercised, the Sedition Law was a gross abridgment of press freedom, aimed directly and with thorough partisanship at any and all opposition voices,

⁹⁶Annals of Congress, pp. 2134, 2137.

⁹⁷John D. Stevens, "Congressional History of the 1798 Sedition Law," Journalism Quarterly 43 (Summer 1966): 248.

no matter how small. The federal circuit court judges who presided over the seditious libel cases were themselves Federalists, and they decided what was truth and what was not. In none of the dozen or more trials was truth successfully presented as a defense. And while the law, as written, did not require proof of good intent, the judges interpreted the law to require such. They claimed that bad intent, which could be inferred from the tendency of the words to stir up sedition, was the basis for their prosecutions.

As passed and signed into law by President Adams on July 14, 1798, the Sedition Law was one to which Hamilton could give support. "Hamilton went as far in the direction of sustaining the principle of [this law] as any one."⁹⁸ Yet many scholars have maintained that Hamilton gave no support whatsoever to the punitive Sedition Law. At least three well-known historians⁹⁹--one of them, ironically, an admitted Jefferson partisan--have absolved him of complicity in the support of the law on the basis of the one phrase in his letter to Wolcott: "Let us not establish a tyranny."

⁹⁸Henry Cabot Lodge, Alexander Hamilton (Boston: Houghton, Mifflin and Company, 1899), p. 220.

⁹⁹See John C. Miller, Crisis in Freedom: The Alien and Sedition Acts (Boston: Little, Brown and Company, 1952), p. 73; Andrew C. McLaughlin, A Constitutional History of the United States (New York: Appleton-Century-Crofts, Inc., 1935), p. 268; and Bowers, Jefferson and Hamilton, p. 376.

But once the law was passed, Hamilton considered it helpful and necessary as a "vigorous measure of counter-action" to be taken against the opposition press, which was increasingly hostile toward Adams' policies. Some months after the law was in effect, Hamilton felt that Adams was not employing it with half enough energy. In a letter to House Speaker Jonathan Dayton, he wrote that President Adams should be encouraged to prosecute libelers much more vigorously than he had been to date. He urged that Adams "surround the Constitution with more ramparts" against dissenters, and "disconcert the schemes of its enemies."

In this letter to Dayton, Hamilton also proposed that the Sedition Law should encompass others than just the government officials. It would be useful to declare, he wrote, that all writings "which at common law are libels, if levelled against any officer whatsoever of the United States, shall be cognizable in the courts of the United States."¹⁰⁰ Here, Hamilton was suggesting an expansion of the Sedition Law, one which would include himself, as acting general of the standing army, in the group which could not be criticized by the press. And since his wish to see his own critics subjected to the federal Sedition

¹⁰⁰"Letter to Jonathan Dayton," Works, vol. 10, pp. 331-335. Lodge places this letter between December, 1798, and February, 1799.

Law never came to pass, he resorted to calling on the common libel law to punish one of his more ardent newspaper critics.

It is in the case of the Argus that Hamilton has probably best earned his reputation as an opponent of opposition press criticism of government and its officials. It is this case which casts him in the light of a man who stood ready to suppress the free press. The Argus was the only Republican paper in New York and one of the most influential in the nation. While a federal sedition charge was already pending against it and its editor, Mrs. Greenleaf (a case which never came to court), Hamilton brought charges against the paper for a personal libel. He thought that criticism of himself was equal to a threat against the peace and security of the government itself, given his position as acting head of the army.

So, whether or not he had admired the Sedition Law for its libertarian provisions, especially those guaranteeing truth as a defense in a libel charge and jury determination of the matter, he was now willing to charge a paper under the common law, which did not provide these two protections.

The Argus had reprinted an article from the Boston Constitutional Telegraphe, itself a reprint from other Republican newspapers, charging Hamilton with an attempt

to buy the Philadelphia Aurora, and hinting at other indiscretions. Specifically, the article said Hamilton had attempted to suppress the Aurora by purchasing it from Mrs. Benjamin Franklin Bache. An editorial comment asked how he could raise the estimated \$20,000 selling price, since he had pleaded poverty just two years earlier in an attempt to clear himself of a charge of speculation as Treasury Secretary. If Hamilton could not raise that much money, the article suggested, perhaps he could get help from other Federalists, or even from the British secret service fund.

This last crack particularly angered Hamilton, and he immediately wrote to the Attorney General of New York, Josiah Hoffman. Claiming that "personal considerations alone" were not involved--ordinarily he would only repay "hatred with contempt"--he said that public motives compelled him to act. He went on angrily:

A bolder calumny; one more absolutely destitute of of foundation, was never propagated. And its dangerous tendency needs no comment; being calculated to inspire the belief that the independence and liberty of the press are endangered by the intrigues of ambitious citizens aided by foreign gold.

In so flagrant a case, the force of the laws must be tried. I therefore request that you will take immediate measures towards the prosecution of the persons who conduct the enclosed paper.¹⁰¹

¹⁰¹"Letter to Josiah O. Hoffman," Works, vol. 10, pp. 355-356. Lodge places this letter between July and October, but James M. Smith has fixed the date as November 6, 1799, the day the Argus article appeared.

Attorney General Hoffman sent his assistant, Cadwallader D. Colden, to the Argus office, where he asked Mrs. Greenleaf who was responsible for the offensive article. She said her journeyman-printer, David Frothingham, was responsible for everything in the paper. Frothingham agreed, saying he "expected" that he was answerable for any material in the paper. He added that the offending piece was only a reprint and one in which he had no personal concern. He was charged under the common libel law for being the printer of offending words.

Frothingham was tried in New York on November 21, Judge Radcliff presiding. The inquiry of the jury, he said, "would be whether the piece mentioned in the indictment was calculated to expose Gen. Hamilton to the hatred and contempt of his fellow citizens, and if it was, whether the defendant had published it."¹⁰² Such were the conditions of common libel law.

Proving that Frothingham had printed the article was a simple matter: Colden simply testified that Frothingham had said he was responsible for all Argus articles. The only other witness was Hamilton himself, who wished to speak to the charges made in the offending piece. But

¹⁰²Francis Wharton, ed., "Trial of David Frothingham for a Libel on General Hamilton," State Trials of the United States During the Administrations of Washington and Adams (Burt Franklin, 1849; reprint ed., N. Y.: Burt Franklin, 1970), p. 651.

since truth was not admissible under common law, he could no more present evidence of the falsity of the charges than the Argus could give evidence of their truth. Hamilton was allowed, however, to explain certain innuendoes charged in the article and he spoke of his innocence in the speculation charge. He swore he had not offered to buy the Aurora, even though he considered the paper hostile to the United States government.

Defense attorneys Edward and Brockholst Livingston argued a logical and impressive case, but to no avail. It took the jury only two hours to find in favor of the court's instruction: guilty, since guilty of publication. The jury recommended clemency, but the court disregarded this advice and sentenced Frothingham to four months in prison, charged him \$100 for court costs, and required the posting of \$2,000 bond to be held for two years after his release to insure against further libels.

Hamilton's successful libel charge against the Argus, together with the pending federal indictment, hit the paper hard. Mrs. Greenleaf was forced to sell, though she did find a Republican buyer. But the indictment was made at a crucial political hour: two months before the 1800 elections. Hamilton's action has, therefore, earned him the extreme criticism that he stood "ready to stifle democratic dissent," that his "role in the suppression of

the New York Argus stamped him as an advocate of the doctrine that an administration may utilize seditious libel prosecutions against its opponents."¹⁰³

But the Argus episode does not represent Hamilton's final word on the subject of the press in a democracy. In 1804, he argued against the notion that an administration can use seditious libel prosecutions to silence criticism and dissent. By 1804 the Republicans were in power and the Federalist press had become the opposition press. The Republicans, who had prided themselves on opposing the Sedition Law, now found that its principle could be useful. Of course the law had expired and President Jefferson had pardoned all those convicted under it. But the Republicans now took to punishing Federalist voices of criticism under the common libel law, just as Hamilton had done in the Argus case.

When Harry Crosswell reprinted an article in his weekly paper, The Wasp, which was critical of Jefferson, Republican Attorney General Ambrose Spencer instigated a libel charge against him **under the common law**. The indictment charged Crosswell with intending to "detract from, scandalize, traduce, and vilify" Jefferson, "and to represent him...as unworthy of the confidence, respect,

¹⁰³James Morton Smith, "Alexander Hamilton, the Alien Law, and Seditious Libels," The Review of Politics 16 (1954): 333.

and attachment of the people." It continued that Croswell, on September 9, 1802, did "wickedly, maliciously and seditiously print and publish...a certain scandalous, malicious, and seditious libel," accusing Jefferson of paying a certain James Callender "for calling Washington... a traitor, a robber, and a perjurer; for calling Adams... a hoary-headed incendiary, and for most grossly slandering the private characters of men who [Jefferson] well knew to be virtuous."¹⁰⁴

The James Callender mentioned in the indictment had called Washington and Adams names, to be sure. He had been among the most vitriolic of Republican critics and had been convicted under the Sedition Law. Jefferson had thought his a worthy cause and had contributed about \$50 to help defer Callender's \$200 fine. When Jefferson later decided Callender was a rascal and refused to give him a postmastership in Richmond, the bitter Callender accused Jefferson of having paid him.

At any rate, Crosswell tried to put his trial off until Callender could testify to the truth of the charges. But since the case would be tried under common law, the truth would not be admissible evidence anyway. Crosswell was convicted by Chief Justice Morgan Lewis.

¹⁰⁴In Hamilton, Works, vol. 8, pp. 387-388n.

At this point, Hamilton agreed to appeal Croswell's case. He had a personal interest in the case as well as a legal one. For one thing, the offending article in The Wasp had first appeared in the New York Evening Post, the paper founded by Hamilton. And more significantly, Callender was the one who had earlier brought to the surface old charges of speculation against Hamilton, forcing him to confess his adultery. Hamilton must have felt some small satisfaction in seeing Jefferson get equal exposure by Callender's hand.

People versus Croswell was presented on appeal at the Court of Errors at Albany in February of 1804. Here, Hamilton "played the role of Andrew Hamilton, eloquently championing the cause of freedom of the press."¹⁰⁵ His argument presented the two safeguards in libel cases that the earlier Hamilton had presented in the 1735 Zenger case: that truth be admissible as a defense and that the jury decide both the fact and the law.

He gave his definition of the liberty of the press as consisting "in the right to publish with impunity truth, with good motives, for justifiable ends, though reflecting on government, magistracy, or individuals."¹⁰⁶ This was a

¹⁰⁵Leonard Levy, ed., Freedom of the Press from Zenger to Jefferson (Indianapolis: Bobbs-Merrill, 1966), p. lxxviii.

¹⁰⁶"Speech in the Case of Harry Croswell," Works, vol. 8, pp. 389-390. The rest of the material from this speech is also from Works, vol. 8, pp. 387-425.

repudiation of both the common libel law and the Sedition Law as it was exercised, since both had interpreted the test of criminal words to be criticism of government and its officials, per se, regardless of truth. Hamilton also repudiated the idea held by the Adams administration that criticism of government cannot be tolerated. The press must operate as a "salutary check" on the powers that be, argued Hamilton. He would not suggest an "unbridled license." But the right of press criticism is essential, he said, when it is remembered "that men, the most zealous reverers of the people's rights, have, when placed on the highest seat of power, become their most deadly oppressors."

Beyond the right to publish truth with impunity, Hamilton discussed the importance of determining the author's intent and raised the question of who should judge intent. He went on at length about the superiority of giving the authority of judging intent to juries rather than to a permanent body of men, who are more likely to be biased because connected with the executive. Judges "may be interested in the general welfare," but "their power may be converted into the engine of oppression." So Hamilton concluded that "it must be with the jury to decide on the intent." He compared the crime of libel to any other crime, such as murder. Murder is not a crime when committed in self-defense, he argued. It is not a crime until it "becomes so in consequence of the

circumstances annexed." So, also, with libel. "No act, separate from circumstances, can be criminal."

And since an understanding of what constitutes libel is subject to change, it must always be a matter for a changing body of men to decide. Unless it can be shown that there is some specific character of libel that will apply in all cases, intent, tendency, and quality must all be matters of fact for a jury, Hamilton argued.

He gave his own definition of libel, though he added the disclaimer that it would be subject to interpretation by various juries. "I would call it a slanderous or ridiculous writing, picture, or sign, with a malicious or mischievous design or intent, towards government, magistrates, or individuals." But if spoken with good motives and for justifiable ends, no material should be considered libelous, he said.

It could be argued that Hamilton's inclusion of this good motive clause was an actual step backwards from the Sedition Law, which said nothing about good motive. But Hamilton went as far as anyone had when he argued that "its being a truth is a reason to infer that there was no design to injure another." And again, he came down on the liberal end of assuming good intent when he said that . "surely a man may go far in the way of reflecting on public characters, without the least design of exulting tumult.

He may only have it in view to rouse the nation to vigilance and a due exertion of their right to change their rulers."

Hamilton's defense of Croswell did not succeed in winning a retrial.* The two Republican judges, Morgan Lewis and Brockholst Livingston, voted against, while the two Federalists, James Kent and Smith Thompson, voted for. The tie vote meant that Croswell's earlier conviction was upheld. However, prosecutor Spencer did not move for sentencing.

The impact of Hamilton's speech was far-reaching. Though he did not live to see the change, his position was no less than "taken as settling the law of libel in this country."¹⁰⁷ As early as April of 1805, the New York legislature passed a declaration bill based on Hamilton's language. It was incorporated into the New York Constitution in 1821 and adopted by state after state. Even today, "something very much like it is to be found in the laws, precedents, or constitution of every state," so that "it could be said that monuments to Hamilton are spread all through the Union."¹⁰⁸ And still today, some states carry

*In his edition of Hamilton's works, Lodge inaccurately notes that Hamilton won.

¹⁰⁷Mitchell, National Adventure, p. 508.

¹⁰⁸Clinton Rossiter, Hamilton and the Constitution (New York: Harcourt, Brace and World, 1964), p. 107.

Hamilton's wording in all of its parts, while others have dropped the good motive and justifiable ends clause, maintaining the single requirement of truth as a defense.

Perhaps the greatest tribute to Hamilton's role in the democratizing of the libel law in his last year was made by press scholar Zechariah Chafee. He concluded that when Hamilton joined Jefferson in defense of criticism, "Blackstonian interpretation of free speech was left without a leg to stand on."¹⁰⁹ The Blackstonian concept of libel had been questioned by Andrew Hamilton at the Zenger trial in 1735. Then the two safeguards of truth as a defense and jury determination were incorporated into the Sedition Law in 1798. And finally, when Hamilton's position was adopted as state law, the Blackstonian concept was effectively killed in America.

So Hamilton's last word on the subject of the press was a most libertarian one. And perhaps his last word was not as inconsistent with his earlier statements as first appears. After all, he again argued the position at the Croswell trial that the press should be as free as the people allow it to be. Fifteen years earlier, in one of his Federalist essays, he had suggested much the same. Also, in presenting the two safeguards in libel charges

¹⁰⁹Free Speech in the United States (Cambridge: Harvard University Press, 1948), p. 25.

that Andrew Hamilton had first articulated, he was actually stating the protections found in the Sedition Law. So perhaps "Hamilton recognized no inconsistency between the views he advanced as defense counsel for Harry Croswell and those he had expressed in 1798-1799."¹¹⁰ We have the testimony of at least one of Hamilton's contemporaries on that subject. James Kent, who was one of the judges at the Croswell trial and who knew Hamilton well, wrote in his memoirs that Hamilton "felt a proud satisfaction in the reflection that the Act of Congress, of July, 1798, for preventing certain libels against the Government, and which Act had been grossly misrepresented, established these two great principles of civil liberty involved in the discussion." Kent continued that "he was as strenuous for the qualification of the rule allowing the truth of the libel to be shown in the defense, as he was for the rule itself."¹¹¹

A review of Hamilton's involvement with libel law would not be complete without mention of the last incident in Hamilton's life. While the Croswell case was being tried, a remark attributed to Hamilton and critical of Aaron Burr appeared in an Albany newspaper. Burr was angered and, after a series of exchanges, challenged Hamilton to the famous duel that took his life.

¹¹⁰Miller, Hamilton, p. 555.

¹¹¹"Appendix," Memoirs and Letters of James Kent, ed., William Kent (Boston: Little, Brown and Company, 1898), p. 325.

CONCLUSION

When, in 1804, Hamilton defended Croswell's right to print what he believed to be true, even though it reflected unfavorably on President Jefferson, Hamilton returned to his sensibility of 1778. That was the year in which he wrote three sharp letters in Holt's Journal concerning an unethical congressman. At that point he recognized the press as the natural and proper forum for questioning the practices of a public official, regardless of the consequences. He placed himself clearly on the record for an uncensored and unfettered press.

He went on to lose sight of this early recognition. When in a position of power within the Federalist Party he not only abandoned his faith in a free press, but he became intolerant of that element of the press of a loyal opposition nature. Even though the Federalist newspapers outnumbered the others by a ratio of four to one until 1796, Hamilton felt threatened by them, persecuted, and defensive. He lost sight of the fact that not only did he have strong newspaper support, but that he had profited greatly by the press. He had enjoyed, after all, total access to the papers of his day. He had communicated his ideas and defended his actions as freely and as frequently as he

pleased. Yet he discovered that his position of power was also a position of vulnerability, since his actions and statements were carefully observed by individuals who were not always friendly or unbiased. He never developed the temperament necessary to withstand the scrutiny under which a man is put when he chooses or accepts a public life. He lacked a tough skin and he lacked restraint.

Not that the press was always fair to Hamilton. Freneau gave him a rough time through weekly accusations in the National Gazette for more than a year. And it was less than admirable for James T. Callender to dredge up old and false charges that Hamilton had speculated when he was Secretary of the Treasury. But since it was Hamilton's nature to retaliate and to overreact when questioned or criticized, he hurt himself more than the press did in the first place.

Hamilton's position of power did not corrupt him, but it did blind him to the viewpoint he could see so clearly both before and after he assumed authority. If he appeared to change hats from his days in one of the most powerful seats in government to his final days as a lawyer and private citizen, this reflects a pattern that has become familiar during two hundred years of America political history. Not all politicians have left public office with Hamilton's insight, however. Hamilton, after

being in an excellent position to see how power corrupts, came to the conclusion that the First Amendment, the necessity of which he had once questioned, is unequivocally essential if the America Republic is to remain secure.

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