the ratifications were followed by propositions and instructions for rendering the constitution more explicit, and more safe to the rights, not meant to be delegated by it. Among those rights, the freedom of the press, in most instances, is particularly and emphatically mentioned. In pursuance of the wishes thus expressed, the first congress that assembled under the constitution, proposed certain amendments which have since, by the necessary ratifications, been made part of it; among which amendments is the article containing, among other prohibitions on the congress, an express declaration that they should make no law abridging the freedom of the press.

Without tracing further the evidence on this subject, it would seem scarcely possible to doubt, that no power whatever over the press, was supposed to be delegated by the constitution, as it originally stood; and that the amendment was intended as a positive and absolute reservation of it.

But the evidence is still stronger. The proposition of amendments made by congress is introduced in the following terms: "*The conventions of a number of the states having at the time of their adopting the constitution, expressed a desire, in order to prevent misconstructions or abuse of its powers, that further declaratory and restrictive clauses should be added; and as extending the ground of public confidence in the government, will best ensure the beneficent ends of its institution.*

Here is the most satisfactory and authentic proof, that the several amendments proposed, were to be considered as either *declaratory* or *restrictive*, and whether the one or the other, as corresponding with the desire expressed by a number of the states, and as extending the ground of public confidence in the government.

Under any other construction of the amendment relating to the press, than that it declared the press to be wholly exempt from the power of congress, the amendment could neither be said to correspond with the desire expressed by a number of states, nor be calculated to extend the ground of public confidence in the government.

Nay more; the construction employed to justify the "sedition act," would exhibit a phenomenon, without a parallel in the political world. It would exhibit a number of respectable states, as *denying first that any power over the press was delegated by the constitution*; as proposing next, that an amendment to it, should *explicitly declare that no such power was granted*; and finally, as concurring in an amendment *actually recognizing or delegating such a power*.

Is then the federal government, it will be asked, destitute of every authority for restraining the licentiousness of the press, and for shielding itself against the libellous attacks which may be made on those who administer it?

The constitution alone can answer this question. If no such power be expressly delegated, and it be not both necessary and proper to carry into execution an express power; above all, if it be expressly forbidden by a declaratory amendment to the constitution, the answer must be, that the federal government is destitute of all such authority.

And might it not be asked in turn, whether it is not more probable, under all the circumstances which have been reviewed, that the authority should be with held by the constitution, than that it should be left to a vague and violent construction; whilst so much pains were bestowed in enumerating other powers, and so many less important powers are included in the enumeration.

Might it not be likewise asked, whether the anxious circumspection which dictated so many *peculiar* limitations on the general authority, would be unlikely to exempt the press altogether from that authority? The peculiar magnitude of some of the powers necessarily committed to the federal government; the peculiar duration required for the functions of some of its departments; the peculiar distance of the seat of its proceedings from the great body of its constituents; and the peculiar difficulty of circulating an adequate knowledge of them through any other channel; will not these considerations, some or other of which produced other exceptions from the powers of ordinary governments, all together, account for the policy of binding the head of the federal government, from touching the channel which alone can give efficacy to its responsibility to its constituents; and of leaving those who administer it, to a remedy for their injured reputations, under the same laws, and in the same tribunals, which protect their lives, their liberties and their properties?

But the question does not turn either on the wisdom of the constitution, or on the policy which gave rise to its particular organization. It turns on the actual meaning of the instrument; by which it has appeared, that a power over the press is clearly excluded, from the number of powers delegated to the federal government.

III. Well may it be said that the unconstitutional power exercised over the press by the sedition act ought *more than any other to produce universal alarm*; because it is levelled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right.

On the second section of the sedition act the following observations present themselves.

1. The constitution supposes that the president, the congress, and each of its houses, may not discharge their trusts, either from defect of judgment, or other causes. Hence, they are all made responsible to their constituents at the returning periods of election; and the president, who is singly intrusted with very great powers, is as a further guard, subjected to an intermediate impeachment.

2. Should it happen, as the constitution supposes it may happen, that either of these branches of the government, may not have duly discharged its trust; it is natural and proper, that according to the cause and degree of their faults, they should be brought into contempt or disrepute, and incur the hatred of the people.

3. Whether it has in any case, happened, that the proceedings of either, or all of those branches, evinces such a violation of duty as to justify a contempt, a disrepute or hatred among the people, can only be determined by a free examination thereof, and a free communication among the people thereon.

4 Whenever it may have actually happened, that proceedings of this sort are chargeable on all or either of the branches of the government, it is the duty as well as right of intelligent and faithful citizens, to discuss and promulge them freely as well to control them by the censorship of the public opinion, as to promote a remedy according to the rules of the constitution. And it cannot be avoided, that those who are to apply the remedy must feel in some degree, a contempt or hatred against the transgressing party.

5. As the act was passed on July 14, 1798, and is to be in force until March 3, 1801, it was of course, that during its continuance, two elections of the entire house of representatives, an election of two thirds of the senate, and an election of a president were to take place.

6. That consequently, during all the elections, intended by the constitution to preserve the purity, or to purge the faults of the administration, the great remedial rights of the people were to be exercised, and the responsibility of their public agents to be screened under the penalties of this act.

May it not be asked of every intelligent friend to the liberties of his country, whether the powers exercised in such an act as this, ought not to *produce great and universal alarm*? Whether a rigid execution of such an act, in time past, would not have repressed that information and communication among the people, which is indispensable to the just exercise of their electoral rights? and whether such an act, if made perpetual, and enforced with rigour, would not in time to come, either destroy our free system of government, or prepare a convulsion that might prove equally fatal to it?

In answer to such questions, it has been pleaded that the writings and publications forbidden by the act, are those only which are false and malicious, and intended to defame; and merit is claimed for the privilege allowed to authors to justify, by proving the truth of their publications, and for the limitations to which the sentence of fine and imprisonment is subjected.

To those who concurred in the act, under the extraordinary belief, that the option lay between the passing of such an act, and leaving in force the common law of libels, which punishes truth equally with falsehood, and submits the fine and imprisonment to the indefinite discretion of the court, the merit of good intentions ought surely not to be refused. A like merit may perhaps be due for the discontinuance of the *corporal punishment* which the common law also leaves to the discretion of the court.—This merit of *intention*, however, would have been greater, if the several instigators had not been limited to so short a period; and the apparent inconsistency would have been avoided, between justifying the act at one time, by contrasting it with the rigors of the common law, otherwise in force; and at another time by appealing to the nature of the crisis, as requiring the temporary rigour executed by the law.

But whatever may have been the meritorious intentions of all or any who contributed to the sedition act; a very few reflections will prove, that its baneful tendency is little diminished by the privilege of giving in evidence the truth of the matter contained in political writings.

In the first place where simple and naked facts alone are in question, there is sufficient difficulty in some cases, and sufficient trouble and vexation in all, of meeting a prosecution from the government, with the full and formal proof, necessary in a court of law.

But, in the next place, it must be obvious to the plainest minds, that opinions, and inferences, and conjectural observations, are not only in many cases inseparable from the facts, but may often be more the objects of the prosecution than the facts themselves; or may even be altogether abstracted from particular facts; and that opinions and inferences, and conjectural observations, cannot be subjects of that kind of proof which appertains to facts, before a court of law.

Again, it is no less obvious, that the *intent* to defame or bring into contempt or disrepute, or hatred, which is made a condition of the offence created by the act; cannot prevent its pernicious influence, on the freedom of the press. For omitting the inquiry how far the malice of the intent, is an inference of the law from the mere publication; it is manifestly impossible to punish the intent to bring those who administer the government into disrepute or contempt, without striking at the right of freely discussing public characters and measures: because those who engage in such discussions, must expect and *intend* to excite these unfavourable sentiments, so far as they may be thought to be deserved. To prohibit therefore the intent to excite those unfavourable sentiments against those who administer the government, is equivalent to a prohibition of the actual excitement of them; and to prohibit the actual excitement of them, is equivalent to a prohibition of discussion having that tendency and effect; which, again, is equivalent to a protection of those who administer the government, if they should at any time deserve the contempt or hatred of the people, against being exposed to it, by free animadversions on their characters and conduct. Nor can there be a doubt, if those in public trust be shielded by penal laws from such strictures of the press, as may expose them to contempt or disrepute, or hatred, where they may deserve it, that in exact proportion as they may deserve to be exposed, will be the certainty and criminality of the intent to expose them, and the vigilance of prosecuting and punishing it; nor a doubt, that a government thus intrenched in penal statutes, against the just and natural effects of a culpable administration, will easily evade the responsibility, which is essential to the faithful discharge of its duty.

Let it be recollected, lastly, that the right of electing members of the government, constitutes more particularly the essence of a free and responsible government. The value and efficacy of this right depends on the knowledge of the comparative merits and demerits of the candidates for public trust; and on the equal freedom, consequently, of examining and discussing these merits and demerits of the candidates respectively. It has been seen that a number of important elections will take place whilst the act is in force; although it should not be continued beyond the term to which it is limited, should there happen then, as is extremely probable in relation to some or other of the branches of the government, to be competitions between those who are, and those who are not members of the government; what will be the situations of the competitions? Not equal; because the characters of the former will be covered by the "sedition act" from animadversions exposing them to disrepute among the people; whilst the latter may be exposed to the contempt and hatred of the people without a violation of the act. What will be the situation of the people? Not free; because they will be compelled to make their election between competitors, whose pretensions they are not permitted by the act, equally to examine, to discuss, and to ascertain. And from both these situations, will not those in power derive an undue advantage for continuing themselves in it; which by impairing the right of election, endangers the blessings of the government founded on it.

Speaking of the *liberty of the press*, and *the liberty of conscience*, he proceeds to observe, 'that the precedent established by the violation of the former of these rights, may be fatal to the latter, appears to be demonstrable, by a comparison of the grounds on which they respectively rest; and from the scope of reasoning, by which the power over the former has been vindicated.

First. Both of these rights, the liberty of conscience, and of the press, rest equally on the original ground of not being delegated by the constitution, and consequently with-held from the government. Any construction therefore, that would attack this original security for the one must have the like effect on the other.

Secondly. They are both equally secured by the supplement to the constitution; being both included in the same amendment, made at the same time, and by the same authority. Any construction or argument then which would turn the amendment into a grant or acknowledgment of power with respect to the press, might be equally applied to the freedom of religion.

Thirdly. If it be admitted that the extent of the freedom of the press secured by the amendment is to be measured by the common law on this subject; the same authority may be resorted to for the standard which is to fix the extent of the "free exercise of religion." It cannot be necessary to say what this standard would be; whether the common law be taken solely as the unwritten, or as varied by the written, law of England.—

Fourthly. If the words and phrases in the amendment, are to be considered as chosen with a studied discrimination, which yields an argument for a power over the press, under the limitation that its freedom be not abridged; the same argument results from the same consideration, for a power over the exercise of religion, under the limitation that its freedom be not prohibited.

For if congress may regulate the freedom of the press, provided they do not abridge it; because it is said only, "they shall not abridge it;" and is not said, "they shall make no law respecting it:" the analogy of reasoning is conclusive, that congress may *regulate*, and even *abridge* the free exercise of religion; provided they do not *prohibit* it, because it is said only "they shall not prohibit it;" and is not said, "they shall make no law *regulating*, or no law *abridging* it."—

I have extracted freely from these able and ingenious arguments because I consider them all powerful to establish these positions:

1. That the exposition of the general phrases in the constitution, contended for by congress in their justification of the alien and sedition acts, will tend by degrees to consolidate the states into one sovereignty.

2. That the obvious tendency, and inevitable result of a consolidation of the states into one sovereignty, would be to transform the republican system of the United States into a monarchy.

3. That the first of these acts, exercises a power not delegated to the federal government, and which by uniting legislative and judicial powers to those of a free executive, subverts the general principles of a free government, as well as the particular organization, and positive provisions of the federal constitution.

4. That the other of these acts exercises in like manner a power not delegated by the constitution, but on the contrary expressly and positively forbidden by one of the amendments thereto;—a power, which