

Fries in the Federalist Imagination: A Crisis of Republican Society*

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The Fries Rebellion, more accurately characterized as it was in the contemporary press as the Northampton Insurrection, reinforced fear among Federalist national leaders that America was on the verge of anarchy. Long convinced that foreign radicals were seditiously fomenting political discontent, thereby alienating the American people from their elected leaders and corrupting republican government, Federalists viewed this rural insurrection as a direct threat to the government. They sought to suppress it quickly, and to punish the leaders to the full extent of the law. If, in the words of President John Adams' Proclamation, the perpetrators had committed "... overt acts of levying war against the United States . . . [while] armed and arrayed in a warlike manner . . .," then they were guilty of treason, and that was punishable by death.¹

But hidden from public view was a growing division within the administration between President Adams and his senior advisors. Adams' advisors insisted that, following his conviction, Fries deserved the death penalty. Such punishment, they deemed, would serve to deter future insurrections, an opportunity which had been missed when the Whiskey Rebels were pardoned. The President, though, questioning the underlying assumptions of the prosecution, decided independently to pardon the insurgents. Adams' critics within the Federalist party took this as yet another example of his being unfit for reelection. This conflict offers insight into the contested meaning of treason, and the operation of the Sedition Act, in addition to a more insightful understanding of the insurrection itself.

The Growing Crisis in Republican Society

By the 1790s, Federalist leaders were acutely aware that republican society was badly fractured and that the citizenry was increasingly alienated from its national government. They attributed this alienation to the influence of radical ideas inspired by the French Revolution, the emergence of Democratic Societies in the early 1790s, and the corrupting influence of foreign radicals, who had immigrated in especially large numbers to the major commercial cities. Radical philosophers, such as Dr. Joseph Priestley and Thomas Paine,

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were routinely disparaged both privately and in print. Yet many Federalists believed that the most dangerous immigrants came from Ireland, especially those associated with the United Irish Society. With the decline of the Democratic Societies, United Irish societies sprang up in the late 1790s. Radical Irish editors, such as John Daly Burk of the *New York Time Piece* and William Duane of the *Aurora*, antagonized the administration by criticizing its pro-British orientation and its hostility to France.² Not surprisingly, the administration would soon prosecute both editors for libel.

Following the Irish Rebellion in 1798, the government was especially concerned that United Irish prisoners condemned to deportation might emigrate to America. Following reports that persons convicted of insurrection were being offered this alternative rather than transportation to Botany Bay, the American minister to Great Britain interceded to prevent their deportation to the United States. Commenting on the deportation of Irish rebels to Russia, John Ward Fenno, the editor of the *Gazette of the United States*, referring obliquely to two leaders of the United Irish movement in Philadelphia, Dr. James Reynolds and William Duane, reflected the attitude of many Federalists: "The samples we have had, of the principles of some *secretly imported Irishmen*, and their enmity to our government, even before they could have known any thing of its operations, or effects, must induce an earnest desire in every good citizen to deprecate the further importation of such patriots." Notwithstanding this intercession, there were reports that convicted Irish rebels were still arriving on American shores.³

Administration leaders were convinced that Irish radicals in the nation's capital were attempting to destabilize the government. Three months following the partisan demonstrations on the Fast Day, Federalist Judge Richard Peters wrote ominously that he and the District Attorney "... are uneasy under the Movements of the internal foes who are plotting Mischief . . . [s]omething may turn up and we will not fail to take advantage of every means to get rid of a Lot of Villains who are ready to strike when they think the Crisis arrives. I wish those who are not for us would openly appear and even in arms if they please. We could therefore manage them."⁴

Two leading United Irishmen, William Duane and Dr. James Reynolds, were considered especially dangerous. At the same time the Philadelphia contingent of troops was preparing to leave to quell the insurrection in Northampton county, Dr. Reynolds was implicated in an assault on the editor of the *Philadelphia Gazette*, who had published a satirical report on a St. Patrick's day celebration. According to one Federalist editor: "It is an occurrence which must prove beyond a doubt . . . that there exists in the midst of us, a combination of men, linked together by the most flagitious principles, and in pursuit of the vilest and most abandoned purposes."⁵ In February 1799, both men were also involved in the highly publicized St. Mary's Chapel riot. In an effort

to collect Irish signatures on a petition to Congress advocating the repeal of the Alien and Sedition acts, they approached Catholic Irish, most of whom were Federalists, in the church yard after Sunday service. In the resulting scuffle, Dr. Reynolds pulled a pistol to protect himself, and they were arrested for riot.⁶

Congress had implemented a controversial program in the summer of 1798 to deal with the threat of radical aliens and to forestall criticism of the government during the Quasi-War with France. In addition to adopting a more restrictive Naturalization Act, and giving the President greater powers to deal with aliens, Congress expanded the Army and Navy, implemented a controversial tax program, which included a stamp tax and a direct tax on houses, and passed a sedition act. The government, under the leadership of Secretary of State Timothy Pickering, used the Sedition Act to quiet opposition newspapers, and made nationalistic appeals to rebuilt public support for the actions of the Adams administration.⁷

President Adams, responding to an enormous outpouring of public support for the administration in the fall of 1798, wrote a series of highly publicized answers to these addresses in which he articulated his view of how a republican society would survive this crisis. He differentiated between corrupt and virtuous republics, pointing out that minorities always resorted to foreign influence in their effort to overthrow the will of the majority. "In virtuous republics," he observed, "... the will of the majority shall be the will of the whole."⁸ In another address, he pointed out that foreign governments were always trying to influence the internal politics of republics but that a virtuous citizenry would unite in time of crisis "... to vindicate the honor and defend the safety of their common country against foreign powers. This is happily the character of Americans."⁹ Adams expressed the Federalist view that the will of the majority found expression in the national legislature and that the people should express their views at elections. Thereafter, the people should obey the decisions of their elected representatives in Congress.

Not surprisingly, a heightened sense of nativism also permeated this period. The editor of the *Gazette of the United States*, opined: "The absurd principle of universal suffrage, and the unrestrained admission of foreign barbarians to this country, and to share in its government, *must* at no very late date, annihilate the one and ruin the other." A correspondent to the paper questioned whether someone who swore a secret oath to the United Irish Society could swear allegiance and become an American citizen. During the trial of the St. Mary's Chapel rioters, the Federalist prosecutor went so far as to question whether aliens had any right to participate in American politics at all.¹⁰

The Federalist program did not go unopposed. Notwithstanding the prohibition in the Sedition Act against criticizing government, Republican leaders fought this legislation from the security of the floor of Congress and

from the relative safety of state legislatures, in the form of the Virginia and Kentucky Resolutions. They also developed an ingenious strategy to oppose the Alien and Sedition Acts openly by undertaking a popular campaign to petition Congress for their repeal in the winter of 1798. Carefully worded in respectful and deferential tones, these petitions challenged the constitutionality and appropriateness of the acts, and though violating the spirit of the Sedition Act itself, they advocated their repeal. This strategy drew considerable popular support to a campaign that criticized the government for over-reaching authority at just the time the government hoped to quiet opposition.¹¹

Against this background, the Northampton Insurrection took place.

The Northampton Insurrection

Objectively, the Northampton Insurrection was a modest affair. According to the Marshal's report in April 1799, approximately 118 warrants were issued against persons for treason or misdemeanors. There were no deaths and only a modicum of violence—and that was applied primarily when the Lancaster Company axe-men destroyed liberty or "Sedition Poles." Whatever shots were fired were by exuberant militiamen trying to arrest insurgents long after the insurrection itself had ended. Many considered it less disruptive than the earlier insurrection in western Pennsylvania, the Whiskey Rebellion, and a far cry from the dangerous situation created by Shays Rebellion. Yet its importance was far greater than it initially appears.¹²

Contemporary reports of the insurrection in the Philadelphia Federalist press were general and vague. They tended to attribute the insurrection to the ignorance of the German population that had been deluded by unscrupulous Republican politicians; to the direct manipulation by French agents; or to the influence of foreign ideas. John Ward Fenno knew exactly whom to blame: "That infernal Aurora, and the infamous United Irishman who conducts it. . . ."¹³

Modern scholarship, based upon examination of county newspapers and court documents, reveals that the insurrection was far more complex than the Federalist press or leadership understood. Rather than representing the reactions of a deluded, ignorant citizenry, it was the product of ethno-cultural conflict between the citizenry and a set of local officials. Furthermore, the people resisted what they saw as unfair taxation, in the form of the Stamp Act and the Direct Tax on houses, in a way that resonated as it had under the former Pennsylvania Constitution of 1776. Under that system, a bill would be passed by one legislature but would not become law until after the next election. Spurred on by local representatives in the 1798 fall election campaign who called into question the validity and constitutionality of the taxes, residents resisted the implementation of the house tax thereafter and petitioned Congress for the repeal of the Alien and Sedition acts.¹⁴

The authorities had made every effort to inform the citizenry of the new taxes. Country newspapers published the laws, both when they appeared and after they were called into question, and pieces appeared which pointed out that the Direct tax would actually fall lightest on poor farmers. The assessors held public meetings to explain the new tax structure. Notwithstanding this, court testimony showed that the insurgents refused to accept these explanations, and they quickly decided to impede the operation of the assessors. Some assessors were intimidated to resign their commissions. Facing a growing general tax resistance, at a time when excise taxes also were not being paid in the western parts of the state, federal authorities moved to arrest the resisters. After Marshal Nichols gathered his prisoners at Levering Tavern in Bethlehem, John Fries led a group of militiamen to rescue them.

After his own arrest, John Fries was characterized as being an ignorant and illiterate German. Asserting that he was far more dangerous, Secretary of State Pickering described him as: "... an abandoned miscreant, with sagacity and knowledge to understand the nature of his offense—and of course to do much mischief."¹⁵ The question became whether John Fries, and other insurgents, were guilty of reason for their actions.

The Trials

As the troops flooded into Northampton County to suppress the insurrection, they were accompanied by Judge Richard Peters who had little confidence that the local judicial authorities would do their duty and by Marshal Nichols, who had an extensive list of warrants to be served on the miscreants. Of the 123 persons named, some 45 were charged with treason, most of the others with misdemeanors. Of this number, only 22 were actually prosecuted for treason. Only Fries and four others were actually tried for treason; ultimately three would be convicted and sentenced to death.¹⁶

While most of the historical attention has been focused on the two controversial trials of John Fries, which spanned three meetings of the United States Circuit Court, and involved three separate Justices of the Supreme Court who sat with Judge Peters, less well known is the fact that contemporaneous juries found two other defendants not guilty of treason. In the short term, this convinced the government to drop treason charges for two others who were scheduled for trial and to re-indict them on lesser misdemeanor charges. Less obvious, but no less important, is the fact that the prosecution, or grand juries in some of these cases, abandoned treason altogether for most of the people originally charged. The defendants were recharged under the Sedition Act for misdemeanors for "conspiracy, rescue, and unlawful assembly."

Hidden beneath the high drama of the various treason trials, and the fascination with the complex motivations of the participants, is a very important legal question regarding the difference between the meaning of treason in

the American legal system and the operation of the Sedition Act. Treason was a much more complicated legal concept in the early national period than it might appear. Defined in the Constitution as consisting "only in levying War against them [the United States], or in adhering to their Enemies, giving them aid and Comfort," treason was criminalized by the first Congress in the federal Crimes Act of 1790. Adhering to the Constitution, the statute stipulated that conviction required the testimony of two witnesses of the "same overt act," or confession in open court, and a conviction mandated the death penalty.¹⁷ Complications resulted from the common law's influence in the federal courts and decisions reached in the earlier trials of the Whiskey Rebels.

The importance of the common law in federal courts is not fully appreciated in the early national period. Federal judges and many Federalist politicians believed that a federal common law was necessary to augment Congressional statutes. Where the statutes did not directly address a particular criminal activity, judges should be able to rely on common law cases and procedures to craft a judicial solution. As in state courts, federal courts followed the pattern of English courts and common law procedures, relying on Blackstone and other commentators to reach their decisions. In addition, many federal judges also emulated their English counterparts by playing a far more active role in the trials than they do today.¹⁸

The plain words of the treason statute and its meaning under the common law were quite different. The focus of the statute is on the act of levying war, or giving aid and comfort to an enemy, and requires the observation of the same overt act by two witnesses, or a confession by the defendant in open court. Under the common law and English statutes, treason was defined far more broadly to include almost any affront to the monarch, his image, as well as the operation of his government. In addition, while the emphasis of the American statute is on an overt act, English precedents elaborated a constructive definition of treason, whereby participation in a conspiracy, or in a series of actions leading up to an overt act, was brought within the ambit of the charge. Deciding whether a narrow or broad definition of treason was preferable, William Blackstone aptly stated: "As [treason] is the highest civil crime (considered as a member of the community) any man can possibly commit, it ought therefore to be the most precisely ascertained."¹⁹ The struggle over whether to style a narrow or broad definition of treason was nowhere more evident than in the trials of the Western Insurgents in 1795.

Farmers on the Pennsylvania frontier had used force to oppose the operation of the Excise Tax on whiskey stills after adoption of the law in 1791. They intimidated revenue officers, some of whom they tarred and feathered, and later violently attacked the residence of the district inspector, which was being defended by the United States Marshal and a small contingent of federal troops, at the cost of several lives. Ultimately they threatened to attack the

federal arsenal at Pittsburgh. The insurrection was suppressed when the federal government called out various state militias and leaders of the insurrection were apprehended and brought to trial.²⁰

During the trials of the Western insurgents, the American law of treason was first defined. With the concurrence of the court, the prosecution argued that there was parity between English common law precedents and the American statute. In the words of William Rawle, the district attorney and leading prosecutor who would later try the Northampton Insurgents: "What constitutes a levying of war . . . must be the same in technical interpretation, whether committed under a republican or a regal form of government, since the institution may be assailed and subverted by the same means." In other words, raising a body of men to repeal a law by intimidation or violence, or to use force to prevent the execution of a law, constituted an act of levying war against the state. Thus, so too would be the assembly of men armed and arrayed in a warlike manner for a treasonable purpose. Furthermore, the testimony of two witnesses to the same overt act is not required if the various acts were part of the same transaction. Attorneys for the defense argued unsuccessfully for a narrow interpretation of the law, one which minimized the use of common law precedents in favor of the plain words of the statute.²¹

The adoption of the Sedition Act in 1798 significantly strengthened the ability of the federal government to punish people for certain lesser crimes than treason. Commonly identified with the suppression of the press and free speech during the Quasi-War with France, the Sedition Act is normally not associated with the Northampton Insurrection. Yet its first provision states that it is a high misdemeanor to form unlawful combinations or conspiracies to impede or intimidate officers of the government from carrying out their duties. Conviction could result in a fine of up to five thousand dollars, imprisonment for six months to five years, and the court had discretion to impose provisions for continued good behavior after completion of the sentence.²² Not only would the Sedition Act prove to be a convenient statute to apply against the tax resisters originally charged along with Fries, but it could prove to be life-saving to Fries if it could be argued that his actions were a mere rescue, and, while in violation of the Sedition Act, not treasonous. Conviction under the Sedition Act would mean the difference between a prison term and fine, and a death penalty for treason.

But for Fries, the legacy of the Western Insurgency cases was evident in Justice James Iredell's charge to the Grand Jury when the Circuit Court convened in the spring of 1799. In it he said:

The only species of treason likely to come before you is that of levying war against the United States. There have been various opinions, and different determinations of the import of those words. But I think I am

warranted in saying, that if in the case of the [Northampton] insurgents . . . the intention was to prevent by force of arms the execution of any act, of the Congress . . . (as for instance the last tax, the object of their opposition) any forcible opposition calculated to carry that intention into effect was a levying of war against the United States, and of course an act of treason.

Iredell went on to distinguish treason from crimes covered by the Sedition Act. According to his interpretation, "[a]ny combinations . . . which before the passage of this act, would have amounted to treason, still constitute the same crime." The impression was that an individual might violate the Sedition Act, but all combinations would fall under the treason statute.²³ On this basis, the Grand Jury indicted John Fries for treason.

The prosecution's theory adopted Justice Iredell's stance.²⁴ They argued that Fries and the others levied war on the United States by appearing armed and arrayed when they rescued the marshal's prisoners. They also showed that he had publicly opposed the federal house tax and impeded its operation by intimidating the tax assessors. They often made direct comparisons to the actions of the Western Insurgents. The situation, however, was unlike the Western Insurrection in that no shots were fired. And an examination of the record shows that John Fries was very careful to remove his sword whenever he negotiated with the marshal. Indeed, he was a moderating influence on people who wanted to rescue the prisoners through violence.

The defense argued for the strict interpretation of the statute and that the government should have charged Fries with a high misdemeanor under the Sedition Act. The defense team was an unlikely combination. Alexander J. Dallas, an active Republican leader who was often called upon to defend radicals in court, and William Lewis, a highly respected Federalist former District Court judge, defended John Fries. In his opening statement, Dallas argued that the prosecution's assertion that the American statute borrowed the words of the English statute did not mean that it " . . . also adopted all the inferences and expositions of the British courts." Indeed, even leading English commentators warned against "constructive treasons." He also argued that Fries actions did not constitute treason and that Congress intended them to be prosecuted under the Sedition Act.²⁵

John Fries would be tried twice for treason. The first trial would end in a mistrial because the defense showed that one of the jurors had prejudged his guilt; after a sensational second trial, he was found guilty and condemned to death. Four other insurgents were tried for treason; two of whom were also found guilty and condemned to death.²⁶ The real importance of these trials, however, is that the record shows the disputed dimensions of the law of treason far more clearly than in the case of the Western Insurgents.

President Adams, Federalist Partisanship and the Pardon

President Adams' attitude towards the Northampton Insurrection is as complex as his initial proclamation. While it might appear as damning as President Jefferson's later announcement of Aaron Burr's culpability in a conspiracy, President Adams qualified the determination of guilt with the word "if" in his proclamation. "If" the insurgents were involved in the act of levying war, then they would be guilty of treason against the United States. The President shared the general Federalist belief that radical groups, and American citizens deluded by foreign ideas, posed a significant threat to American domestic tranquillity and security. He also was sensitive to the fact that people in western Pennsylvania were still resisting the imposition of federal excise taxes, although less overtly than they had done a few years before, so that if this opposition to the Direct and Stamp Taxes were allowed, it could escalate into a greater problem. But the President was also an attorney by training. And as a lawyer, who successfully had defended British soldiers after the Boston Massacre, he was willing to court unpopularity if the logic of the law led to a different conclusion than what his advisors or the public expected.

The President's relationship with his Cabinet and the Federalist party leadership also was undergoing considerable stress in this period. President Adams, who preferred to return to his home in Quincy whenever Congress was not in session, relied heavily on Secretary of State Pickering to run the government in his absence. At the same time that the President was basking in the expressions of public support for the administration's resolve in the XYZ Affair, his efforts to normalize relations with France short of war and his reluctance to expand the military quickly and fully drew criticism from other Federalists. The moving force behind the expansion of the army, Major General Alexander Hamilton, and his supporters in the President's Cabinet, notably Pickering and Secretary of War James McHenry, were increasingly critical of the President's lack of resolve in foreign and domestic affairs. The President's decision to pardon John Fries, and the others convicted in the insurrection, served to divide the Federalist party even further.

Considering this criticism, it is important to understand how President Adams used his pardoning power before he considered Fries' petition for clemency. Upon receipt of a pardon request, the President's normal procedure was to seek advice from the department head under whose jurisdiction the offense occurred. He considered pardons for various matters during this time. Robert Worrall, whose bribery case led to a controversial decision by the federal Circuit Court (Pennsylvania) on whether there was a federal common law in 1798, was languishing in the Philadelphia goal because he could not pay his fine after having served his sentence. On the recommendation of the Secretary of State and District Attorney, the President secured his release by remitting the fine.²⁷ He also pardoned several persons who had been convicted of violat-

ing the Sedition Act, after ascertaining that they played minor roles in opposing the government, on the grounds that "clemency of the government may be extended . . . consistently with the public good."²⁸ Several others, whom the President felt deserved to be punished for sedition, would not be pardoned.²⁹

President Adams also considered a number of pardon requests for persons convicted of capital crimes. These were the product of courts martial and the President normally gave due deference to the military verdicts. Nonetheless, he considered each request seriously and sometimes used the pardoning power.³⁰ The President, however, accepted the necessity and appropriateness of capital punishment for the good of the service.³¹ Thus, he was willing to endorse capital punishment where appropriate.

The shadow of the Whiskey Rebellion also fell on President Adams during the Northampton Insurrection. David Bradford, a leader of the Western Insurrection who had been living in exile for four years, petitioned the President for clemency. Convinced that Bradford had "declared his contrition and sincere repentance for all his errors and misdeeds in relation to the late insurrection," the President granted a pardon because "the restoration of peace, order, and submission to the laws of the said western parts of the said state renders it less necessary to make examples of those who may have been criminal, the principal end of human punishment being the reformative of offenders and the punishment of crimes in others."³² John Ward Fennno, the editor of the federalist *Gazette of the United States*, immediately realized the implication of the Bradford pardon: "Should *Fries*, the leader of the present rebellion in that state, meet with similar lenient treatment, the Jacobins will be induced to engage in frequent insurrections, for the sake of having their names known abroad."³³

The President followed the first treason trial of Fries from his home in Quincy. After nine days the jury returned a verdict of guilty and Fries was condemned to death. Secretary of State Pickering reported on the trial and observed to the President:

This conviction is of the highest importance to vindicate the violated laws and support the Government. It was therefore anxiously expected by the real friends to the order and tranquillity of the country, and to the stability of its government. Among such men I have heard but one opinion - That an *example* or *examples of conviction and punishment* of such high-handed offenders were *essential, to ensure future obedience to the laws, or the exertions of our best citizens to suppress future insurrections*. The examples appear singularly important in Pennsylvania, where treason and rebellion have so repeatedly reared their heads. And painful as is the idea of taking the life of a man, I feel a calm and solid satisfaction that an opportunity is now presented, in executing the just sentence of the law, to crush that spirit which if not overthrown and destroyed, may proceed in its career, and overturn the Government.³⁴

Much to the consternation of the Federalists, this verdict was overturned because a juror had declared a prejudice against the defendant during the trial.³⁵

John Fries would be convicted of treason and sentenced to death at the second trial held in Philadelphia in April, 1800, before Justices Chase and Peters. In an effort to clear up a backlog of civil cases, Justice Chase sought to expedite the trial by circulating an opinion of the controlling law which effectively undercut the defense strategy of Fries's attorneys. They immediately withdrew in protest and ultimately Fries agreed to have Justice Chase represent his interests from the bench. All of this, even for Chase, was decidedly irregular, and would be one of the factors leading to impeachment charges being brought against him.³⁶

It is not surprising, considering all of the controversies in both treason trials, that President Adams would give serious thought to the justice of the verdicts. Unlike the Secretary of State, who never questioned Fries's guilt and believed that his punishment would serve to intimidate future popular actions against the government, Adams recognized the legal complexities of the prosecution and defense. When he learned that one of Fries's counsel in the first trial, William Lewis, the Federalist former District Court Judge, had appealed the first verdict on the basis that his client had not committed treason, he asked the Attorney General for a memorandum on the legal reasons for this challenge. He also wrote to Secretary of Treasury Wolcott trying to obtain more personal information about Fries, whether his actions many have been manipulated by "great men" operating behind the scenes, and if the insurgents had communicated with people in other jurisdictions.³⁷

Soon after the conclusion of the first treason trial the President received petitions from several prisoners, including John Fries. He directed the Secretary of State to circulate them to the other Heads of Department, especially the Attorney General, because: "I wish all to consider whether it is proper that any answer should be given, by me, or my order, to any of them. I think it might be said that these people are brought to humble themselves 'in dust and ashes before their offended country.' That repentance, however, which, in the sight of an all penetrating heaven, may be sufficiently sincere to obtain the pardon of sins, cannot always be sufficiently certain in the eyes of mortals to justify the pardon of crimes."³⁸ Not surprisingly, the recommendation of the Heads of Department was "... that no pardon should *now* be granted, nor any answer given." Attorney General Charles Lee observed that not all of the Northampton insurgents had been tried, and that because Pennsylvania was inhabited by some "ignorant, refractory, headstrong, and wicked" persons that "exemplary punishment of rebellious conduct" would be both necessary and constructive.³⁹

The President received another petition for clemency from John Fries upon his second conviction. He forwarded the petition to his Heads of De-

partment and posed a series of questions which sought to determine whether Fries was actually guilty of treason, or only riot, and if there was a need for a hanging if Pennsylvania had been restored to peace. Of all the issues, President Adams was most interested in the question of whether Fries actions constituted treason. They responded immediately that the petition for clemency should be refused and that John Fries, at least, should pay the penalty imposed by the court. Notwithstanding this advice, the President pardoned Fries and the others.⁴⁰

The president was unjustly criticized by his political enemies within the Federalist party for his decision to pardon Fries. Secretary of State Pickering was especially outraged and later charged that the President had improperly solicited and relied on advice from the defense counsels rather than asking the prosecution and the bench. This charge would be incorporated in Alexander Hamilton's famous letter declaring Adams unfit to serve as president.⁴¹ Fries's lead counsel, William Lewis, who considered himself a warm friend of Hamilton, stated that he had no direct contact with the President and that the Attorney General had asked him to submit a list of authorities supporting his contention that Fries guilty only of a lesser crime and not of treason. The joint opinion prepared by Lewis and Dallas was submitted to the Attorney General who then forwarded it to the President after one of the judges who presided at the both trials, Richard Peters, had examined it. Here they articulated the arguments which they had been unable to make in the second trial because of Justice Chase's restrictive rulings.⁴²

The President's reasons for pardoning John Fries were ambiguous, given the evolving judicial doctrine of constructive treason. As Lewis and Dallas pointed out, the Constitution defined treason strictly and not in accordance with the constructive definition preferred by the prosecution.⁴³ Even if John Fries was arrayed in arms, and the tavern in Bethlehem was surrounded by armed men, some of whom were in uniform, the trial showed that he was unarmed when he negotiated with Marshal Nichols in the tavern. As we know now from a more complete examination of the sources, that John Fries exerted a moderating spirit on the insurgents that day. Therefore, the evidence presented at trial failed to show that he was levying war on the United States. According to the President:

My judgement was clear, that their crime did not amount to treason. They had been guilty of a high-handed riot and rescue, attended with circumstances hot, rash, violent, and dangerous, but these did not amount to treason. And I thought the officers of the law had been injudicious in indicting them for any crime higher than riot, aggravated by rescue.⁴⁴

The President also was convinced that the insurgency was the product of the manipulations of "great men" who had worked behind the scenes and escaped arrest. Evidence implicated Republican Congressman Blair McClenachan and several state representatives. As the President explained his decision almost two decades later: "What good, what example would have been exhibited to a nation by the execution of three or four obscure, miserable Germans, as ignorant of our language as they were of our laws, and the nature and definition of reason? Pitiful puppets danced upon the wires of jugglers behind the scene or under ground. . . . Had the mountebanks been in the place of the puppets, mercy would have had a harder struggle to obtain absolution for them."⁴⁵ This allusion that he would have been less sympathetic if the "mountebanks" had been convicted suggested that the President would have accepted convictions based upon a constructive definition of treason.

The Future of Republican Society in the Shadow of Insurrection

The Northampton insurrection failed to produce a more general uprising among the disaffected in America, but a sense of danger lingered. The President's advisors believed that a more general insurrection had been avoided only because of the prompt manner with which it was put down. Yet the spirit of insurrection haunted a western Pennsylvania held in check by the presence of a contingent of regular army troops and a continued use of the Sedition Act to restrain criticism of the government.⁴⁶

Political leaders faced a new reality in the spring of 1800. Following normalization of relations with France and without the threat of foreign invasion, which had been used to justify the expansion of the army and the imposition of controversial internal taxes, few Federalists believed that a large army was either desirable or prudent. Indeed, much to President Adams's satisfaction, the insurrection had been put down with minimal military force, one which had relied heavily on volunteers. Furthermore, now that the Army was under the command of his political nemesis, Major General Hamilton, who himself was not a native born American, the President was even more dissatisfied with it. With no standing army to hold the masses in awe of the government, how might they be restrained?

In his annual Address to the Congress, after referring to the political instability reflected by the Northampton Insurrection, the President recommended a reorganization of the judiciary to execute the laws of the country and to protect individuals from oppression. Such reform was needed because "[i]n this extensive country it cannot but happen that numerous questions respecting the interpretation of the laws, and the rights and duties of officers and citizens, must arise."⁴⁷ The Judiciary Act of 1801 answered this request admirably. The final bill expanded and reformed the Circuit Court system and provided for a more efficient operation of the federal criminal justice system.⁴⁸

The President paid a high political cost for his decision to pardon Fries. Not only did he invite criticism from other Federalists, that criticism hardened his resolve to purge the Hamiltonians from his Cabinet, which seriously undermined party support for his re-election in 1800. While both District Attorney Rawle and Marshal Nichols quietly resigned in protest as Adams considered the pardon, Hamilton referred to it in his famous letter arguing that Adams was unfit to be President in 1800. Former Secretary of State Pickering even asserted that the President had struck a deal with Jefferson to remain in power: "... I believe Mr. A[dams] is so selfish, and so absolutely swayed by his passions, that he would sacrifice the federal party, his former supporters, to secure the elections of Mr. Jefferson and himself, and after sacrificing every principle of decency, honor, propriety, and justice in his proceedings relative to the pardon ... I can believe Mr. A capable of anything; to promote his personal views or to gratify his resentments."⁴⁹

Adams deserved better. His actions regarding the pardon were consistent with his use of that power at other times. Pickering's assertion that the President improperly communicated with the defense attorneys rather than consulting with the judges and prosecutors for their legal opinion is contradicted by an examination of the facts. Historians who judge the Adams administration solely from the vantage point of the Hamilton-Pickering wing of the Federalist party run the risk of significant bias against the president and a distorted view of his actions and motives.

The doctrines of constructive treason and federal common law continued to influence the federal courts for years to come. Notwithstanding the expiration of the Sedition Act with the inauguration of the new president in March 1801, the common law of libel was followed in the federal courts until 1812.⁵⁰ The prosecution would use the same arguments for constructive treason in the trial of Aaron Burr in 1807.

Notes

1. For the background of the Fries Rebellion I have relied on Paul Newman, "The Fries Rebellion of 1799: Pennsylvania Germans, the Federalist Party, and American Political Culture," Ph.D. dissertation, University of Kentucky (1996), and his article, "Fries Rebellion and American Political Culture, 1798-1800," *Pennsylvania Magazine of History and Biography*, 119/1-2 (January-April 1995), 37-73; see also Peter Levine, "The Fries Rebellion: Social Violence and the Politics of the New Nation," *Pennsylvania History*, 40 (July 1973), 241-58. Proclamation Concerning the Insurrection in Pennsylvania, 12 March 1799, Charles F. Adams, ed., *The Works of John Adams*, 10 vols. (Boston, 1854), IX: 175 [hereafter cited as Adams, ed., *Works*].

2. For a recent treatment, see David A. Wilson, *United Irishmen, United States: Immigrant Radicals in the Early Republic* (Ithaca, 1998), and Michael Durey, "Tom Paine's Apostles: Radical Emigres and the Triumph of Jeffersonian Republicanism," *William and Mary Quarterly*, 3d Ser., 44/4 (Oct. 1987), 661-88.

3. *Gazette of the United States*, 15 June 1799. Rufus King wrote Secretary of State Pickering, 3 Aug. 1798: "It appears by the accounts from Ireland that nearly one hundred Prisoners—including Lawyers, Physicians, merchants, and others, who have been engaged as Chiefs of the late Rebellion, are to go into Exile for life—a Bill for this Purpose has been brought into the Irish Parliament. . . and that "I do my duty in apprising you of the probability of the measure, it belongs to others to make those regulations that will enable the President to take care of public safety." Timothy Pickering Papers, reel 23, 1, Massachusetts Historical Society [hereafter cited as Pickering Papers]. For newspaper reports of this possibility, see *Porcupine's Gazette*, "Alarming," 5 Jan. 1799; "Important" [reporting that Irish prisoners will not be deported to America], 19 Jan. 1799; "United Irishmen" [reporting arrival in New York of United Irishmen on board the ship Draper], 14 Feb. 1799; as well as in the *Gazette of the United States*, 15 June 1799.

4. Richard Peters to Secretary of State Timothy Pickering, 30 Aug. 1798, Pickering Papers, reel 23, 96. See also Pickering to Peters, 28 Aug. 1798, Richard Peters Papers, vol. 10, 53, Historical Society of Pennsylvania [hereafter cited as Peters Papers]. William Cobbett also

warned of this danger in his serial publication of Baurel's *Memoirs of Jacobinism* . . . , revealing the dangers of Secret Societies, *Porcupine's Gazette*, 17-20 May 1799. According to Cobbett: "In the next extract the reader will see, from the authentic documents, that there has ever subsisted a close connection between the secret societies here and those in Ireland." *Ibid.*, 17 May 1799.

5. *Gazette of the United States*, 30 March 1799; see also, "Infernal Outrage," 29 March 1799. For an account of the ensuing trials before the Mayor's Court [April Sess.], see *ibid.*, 9 (M'Gurk and Scott), 10 (McMahon), April 1799. For other examples of the antipathy towards the United Irish, see "Q," 18 May 1799. There was also a report a United Irish sponsored attack on John Ward Fenno, editor of the *Gazette of the United States*, see *Porcupine's Gazette*, 1 Feb. 1799. William Cobbett reported that Dr. Reynolds was related by marriage to the United Irish leader, Wolf Tone; *ibid.*, 5 Feb. 1799.

6. See *Porcupine's Gazette*, 11, 12 ["United Irish Riot"], 13, 14 Feb. 1799. For a more sympathetic treatment of the St. Mary's Chapel riot see William Duane, *A Report of the Extraordinary Transaction which Took Place in Philadelphia, in February 1799* (Phila., 1799) [hereafter cited as Duane, *A Report*].

7. James Morton Smith's *Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties* (2d ed.; Ithaca, 1966) remains the most comprehensive interpretation of the background and operation of these laws. Smith did not fully appreciate the significance of the campaign to repeal the Alien and Sedition laws nor the importance of the Sedition Act in the Northampton Insurrection trials.

8. See Answer to the Inhabitants of the City of Richmond, 10 June 1798, Adams Family Papers, reel 389, Massachusetts Historical Society [hereafter cited as Adams Family Papers].

9. See Answer to the Inhabitants of Washington County, Pennsylvania, 12 June 1798, *ibid.*

10. *Gazette of the United States*, 3 April 1799. See also "Q" to Mr. Fenno: "Not having enquired into the legal rights and immunities of the citizens of America, I would wish to ask whether a United Irishman bound by his secret oath to serve the French Directory whenever called upon, can nevertheless enjoy the privileges of a citizen of the United States?" *Ibid.*, 18 May 1799. Prosecutor Joseph

Hopkinson observed: "So far as relates to the right of petitioning, I am free to declare that there can be no doubt, but every citizen has that right, and is justifiable in exercising it in a proper manner and proper place: but I also declare that aliens have no right whatever to petition, or to interfere in any respect with the government of this country: as the right of voting in elections is confined to our citizens, the right of petitioning is also; if aliens do not like the laws of this country, God knows there are ways and wishes enough for them to go back again" Duane, *A Report*, p. 37.

11. For a preliminary account of the petition campaign, see my unpublished paper "Freedom of Speech and the Press during the Alien and Sedition Act (1798) Controversy in America," presented at the Northeast American Society for Eighteenth Century Studies (Boston, MA), 12 December 1997.

12. The best account of the insurrection is in Paul Newman's work cited in note 1. There is material in the Adams Family Papers which he did not consult. For this arrest report, see Marshal William Nichols to General William Macpherson, 16 April 1799, which was enclosed in Secretary of War McHenry to President, 22 April 1799, reel 394, Adams Family Papers.

13. *Gazette of the United States*, 16 May 1799. There were other reports in the same paper on the insurrection: "These disturbances all refer directly to the political postures of affairs between this country and France, and occasion has been taken from a late appointment, thus to work up the plot to its crisis." [11 March 1799]; "It is a fact that the *French* faction in Northampton have assumed, and do now wear the *French cockade*." [19 March 1799]; "It is affecting but a partial purpose, to put down the insurrection of a few counties, whilst a band of French mercenaries dispersed over this commonwealth are preparing an Insurrection of the whole state. . . ." [26 April 1799]. The editor of *Porcupine's Gazette* often relied on the *Gazette of the United States* for his domestic news.

14. The petitions calling for the repeal of the Alien and Sedition Acts are not in the legislative files at the National Archives. One, however, was reported in the *Oracle of Dauphin and Harrisburg Advertiser*, in which there were complaints about the operation of the Alien and Sedition acts, the new federal taxes, and the expensive standing army; see "A Liberty

Boy" to Mr. Wyeth, 23 Jan. 1799.

15. Pickering to James Pickering, 7 June 1800, Pickering Papers, reel 13: 542.

16. Marshal Nichols prepared a "List of Persons Against Whom Process has been Issued," dated 16 April 1799, cited above. Of the 123 persons listed, 45 were being sought for treason, 68 for misdemeanors, 5 as witnesses, and 5 for whom no charges were listed. Of the latter group, 1 (Conrad Marks) would be tried for treason, which expanded that group to 46. Considering that only 5 persons were actually tried for treason (Fries, John Gettman, and Frederick Heaney, who were convicted; Conrad Marks and Anthony Stahler, who were found not guilty and were re-indicted and convicted of misdemeanors; Philip Desch and Jacob Kline, whom the prosecutor filed nolle prosequi motions after the Marks trial rather than face the same result, were re-indicted for misdemeanors), an intriguing question is what happened to the other 41 persons initially charged. I searched through the Minutes to the U.S. Circuit Court and discovered that 10 of them simply did not appear in the record. The Grand Jury refused to indict several others for treason and they were prosecuted for misdemeanors. Except for the two persons who were charged but not prosecuted, the remainder were indicted for misdemeanors. This shows the real interplay between treason and misdemeanor prosecutions in the Northampton Insurrection trials. In addition, four others were charged with seditious combinations for raising a liberty pole. Two editors were charged with libeling the administration were not on the marshal's list. See: Minutes of the U.S. Circuit Court, April 1799 to Oct. 1800 meetings, RG 21, Microfilm 932, reel 1, National Archives.

17. Treason is defined in Article III, Section 3, of the Constitution and in Section 1 of An Act for the Punishment of certain Crimes against the United States, Richard Peters, ed., *United States Statutes at Large*, 106 vols. (Boston 1845), 1: 112-19, 112 (hereafter cited as *U.S. Statutes*). For recent interpretations on the law of treason, see: Richard A. Ifft, "Treason in the Early Republic: The Federal Courts, Popular Protest, and Federalism During the Whiskey Insurrection," in *The Whiskey Rebellion: Past and Present Perspectives* (Westport, Conn., 1985), ed. Steven R. Boyd, pp. 165-82, and Thomas P. Slaughter, "The King of Crimes": Early American Treason Law, 1787-

1860," in *Launching the "Extended Republic"* (Charlottesville, 1996), eds. Ronald Hoffman and Peter J. Albert, pp. 54-135.

18. For a perceptive statement of how this conflict influenced the operation of the Circuit Courts, see Maeva Marcus, ed., *The Documentary History of the Supreme Court of the United States, 1789-1800*, 6 vols. to date (NY, 1985-), III: 318-23.

19. William Blackstone, *Commentaries of the Laws of England*, 4 vols. (1765-69); reprint ed., Chicago, 1979), IV: 75, for the complexity of the concept of treason, see *ibid.*, IV: 74-93; and William Hawkins, *A Treatise of the Pleas of the Crown* (1724-26; reprint ed., NY, 1972), both of which were extensively quoted in the trials.

20. See Thomas P. Slaughter, *The Whiskey Rebellion* (NY, 1986).

21. For the trials see, Francis Wharton, ed. *State Trials of the United States . . .* (Phila., 1849), pp. 102-84, and especially *US v. Vigol*, 28 Federal Cases 376 (Case No. 16,621) and *US v. Mitchell*, 28 Federal Cases 1277 (Case No. 15, 788). John Mitchell and Philip Vigol (Wigle) were the only two rebels convicted of treason; both were pardoned by President Washington.

22. See *US Statutes*, I: 596-7 [An Act in addition to the act, entitled "An act for punishment of certain crimes against the United States"].

23. Thomas Carpenter, *The Two Trials of John Fries, on an Indictment for Treason . . .* (Phila., 1800), pp. 14, 15 (hereafter cited as Carpenter, *Two Trials*). This case is also reported in Wharton, ed., *State Trials*, pp. 458-609, which was an edited version of the Carpenter report. I have relied on the more complete edition of the trial.

24. The prosecution was headed by U.S. District Attorney William Rawle, who had prosecuted the Whiskey rebels, and former Federalist Congressman Samuel Sitgreaves, who was from the district and understood German. For Sitgreaves' position on the law of treason, see: Carpenter, *Two Trials*, p. 19. In the prosecution's summary after presenting its evidence, District Attorney Rawle drew heavily on English precedents and the Western Insurrection cases to argue that Fries actions constituted treason (*ibid.*, 85-88).

25. *Ibid.*, 88-110 (Dallas oration), 91 (constructive treason), 95, 99 (crime not treason), and 102 (series of individual acts should not

be construed as accumulative treason). Williams Lewis elaborated these points in his summation.

26. When a jury found Conrad Marks not guilty of treason, Justice Samuel Chase commented: "[Marks] was a most atrocious offender; he had not the least doubt but he was guilty of treason in a high degree, and that the verdict ought to so have been found, and he have been made an example of. There must have been some mistake as to the evidence, or the jury could not have returned a verdict of *Not Guilty*." *Ibid.*, 210.

27. See Pickering to President, 2 Aug. 1798, Adams Family Papers, reel 390; Adams to TP, 10 Aug. 1798, John Adams Letterbook, *ibid.*, reel 119: 11. The normal procedure followed by the President is indicated in the following description: "I also return the papers relative to Ferdinand Stevenson and his pardon. The judgement of Judge Griffin and the Secretary of the Treasury, acquiesced in by you, will be sufficient to justify one in this kind of work, which is always so easy and pleasant that we may be sometimes in danger of doing too much of it." Adams to Pickering, 28 May 1799, Adams, ed., *Works*, VIII: 654.

28. Pardon of William Durrell, 22 April 1800, Records of the Department of State (RG 59), Presidential Pardons and Remission (T967), reel 1: 31-2, NA [hereafter cited as Presidential Pardons]. See also Richard Harison [US Dist. Attny, NY] to Sec. of State Pickering, 10 April 1800, Pickering Papers, reel 26: 77-78; and President to Sec. State, 25 April 1800, John Adams Letterbook, reel 120.

29. See Anthony Haswell [Bennington goal] to President, 3 June 1800, Adams Family Papers, reel 398; notwithstanding two appeals from David Brown of Connecticut for clemency, he would not be pardoned until 1801 by President Jefferson, see pardon of David Brown, 12 March 1801, Presidential Pardons, reel 1: 43-4. James Callender, the Virginia editor convicted of violating the Sedition Act, would also be pardoned by President Jefferson, *ibid.*, I: 44-45.

30. This is illustrated in one case where Adams observed: "I have ruminated so long upon the case of Andrew Anderson that I am under some apprehension that my feelings have grown too strong, and produced a result, that will not appear to you perfectly right. I consider Cox and his associates, as very artful men and being probably considered as men of great con-

sequence in that country, they had the influence to seduce a poor soldier to a crime, for which they probably deserve to be punished, as well as he. In announcing the pardon enclosed, you may order what solemnities you may think fit. He may receive his pardon at the gallows, where it may be announced, that it will be the last time such a crime may be pardoned." President to Secretary of War, 18 Sept. 1799, Adams, ed. *Works*, IX: 30; see also Secretary of War to President, 19 April 1799, Adams Family Papers, reel 394. Congress gave the President the power to review capital sentences or the dismissal of officers from the service in Section 18 of An Act to ascertain and fix the Military Establishment of the United States, 1 *U.S. Statutes*, 484, 485 (1796).

31. See, for example, the case of Samuel Ewing: Sec. of War [Dexter] to President, 30 June 1800, 19 July 1800 ["I transmit for your signature the Warrant for the Execution of the Sentence of the Court Martial on Samuel Ewing.," Adams Family Papers, reel 398; and President to Sec. of War, 10 July 1800 ["[I] think it must be confirmed . . . The crime of this man is so gross that it cannot with safety to the service be pardoned."] John Adams Letterbook, reel 120. See also, regarding Sgt. Richard Hunt, Sec. of War to President, 27 May 1799, reel 394, Adams Family papers; and the newspaper report of the trial and execution of Joseph Perkins for desertion, *Porcupine's Gazette*, 27 July 1799.

32. David Bradford pardon, 9 March 1799, Presidential Pardons, reel 1: 23-4. See also Bradford to President, 20 Sept. 1798, reel 391, Adams Family Papers. When President Washington pardoned ten Whiskey rebels for high treason in 1797, he justified it by saying "it is ever my desire to temper the administration of justice with a reasonable extension of mercy." Presidential Pardons, I: 18-19.

33. *Gazette of the United States*, 29 April 1799.

34. Secretary of State to President, 10 May 1799, Department of State (RG 59), Domestic Letters of Department of State (Mfilm 40), reel 11: 321, NA [hereafter cited as Domestic Letters]. This is also in the Adams Family Papers, reel 394. See also Secretary of the Treasury to President, 11 May 1799, *ibid.* See also "Communication," *Gazette of the United States*, 21 May 1799, arguing that harsh punishments are necessary to restrain foes of the government. Carpenter's *Two Trials* would not be published until 1800; although at the conclu-

sion of the first trial he advertised that he would publish a full report based upon his short-hand notes when the trial was completed. For the record of Fries first trial, see Carpenter, *Two Trials*, pp. 1-175, 204-208.

35. Wharton, ed. *State Trials*, pp. 598-609. The Secretary of State wrote the President: "To the surprise and chagrin of many Mr. Lewis's motion for a new trial, in the case of John Fries, has prevailed." 18 May 1799, Domestic Letters, reel 11: 334. He also wrote Rufus King: "The jury has tried Fries, the leader of the insurgents in this State, agreed on a verdict, quietly without debate or hesitation; but some testimony being adduced before sentence was pronounced, that one of the Jurors had formed an opinion before the trial [subsequent to his being summoned as a Juror, that Fries ought to be hanged]; a new trial was granted. Yet that juror only thought and spoke as every other person did who was equally informed of the facts, without any symptom of malice. Without the least discussion after the case had been committed to them, they agreed that each should write on a ticket his opinion; they did so, and upon examining the tickets each was inscribed guilty. The new trial will be in October." 22 May 1799, Pickering Papers, reel 11: 138-40. Peters blamed Nichols for causing the meeting of the court at Norristown to fail.

36. For the trial record, see Carpenter, *Two Trials*, pp. 177-204; Judge Peters described the trial to Pickering when impeachment charges were brought against him, 24 Jan. 1804, Richard Peters Papers, vol. 10, p. 91. For a general treatment of Chase's behavior in the second trial, see Stephen B. Presser, *The Original Misunderstanding* (Durham, 1991), pp. 108-18.

37. President to Attorney General Charles Lee, 17 May 1799, and Attorney General to President, 28 May 1799, Adams, ed., *Works*, VIII: 648, 653. He asked Wolcott:

"The Termination of the Tryal of Fries is an important, and interesting and an affecting Event. I am unable to conjecture the grounds of Mr. Lewis's opinion, and wish I had a sketch of them.

Is Fries a Native or a Foreigner? Is he a Man of Property and independent, or is he in Debt? What has been his previous life, industrious or idle? Sober or intemperate?

It is of importance to discover, if possible the *great men*, alluded to by Fries in his Ob-

servation to Mr. Wood, is at the bottom of this Business. And the evidence of any Agitator among the Insurgents ought to be collected.

It is of moment also to ascertain, whether the Insurgents had any general views; or extensive communications with others of similar dispositions in other Counties or correspondents with other States.

We ought also to enquire whether Fries is the most culpable among the guilty, if that can be known. It highly concerns the People of the United States and especially the federal Government, that in the whole progress and ultimate conclusion of this affair, neither humanity be unnecessarily afflicted nor public Justice essentially violated, nor the public safety endangered." President to Secretary of Treasury, 17 May 1799, reel 2, vol. 9 #60, Oliver Wolcott, Jr., Papers, Connecticut Historical Society [hereafter cited as Wolcott Papers]. For a popular expression that "great men" were behind the insurrection and deserved punishment, see "Communication," *Gazette of the United States*, 10 April 1799.

38. President to Secretary of State, 13 Aug. 1799, Adams, ed., *Works*, IX: 15. After receiving several more petitions, the President forwarded them too. President to Secretary of State, 2 Sept. 1799, John Adams Letterbook, reel 120.

39. Secretary of State to President, 9 Sept., 1799, Attorney General to President, 2 Sept. 1799, Heads of Department to President, 7 Sept. 1799, Adams, ed. *Works*, IX: 21-23.

40. For Fries's petition, see Wharton, ed., *State Trials*, 643; President to Heads of Department, 20 May 1800, Heads of Department to President, 20 May 1800, President to Attorney General, 21 May 1800, Proclamation [21 May 1800], Adams, ed., *Works*, IX: 57-59, 59-60, 60-61, 178-9. The President also received petitions from other insurgents in the Philadelphia goal whom he also pardoned. See Northampton Prisoners to President, 5 June 1800, reel 398, Adams Family Papers; President to Secretary of State, 25 May 1800, Records of the Department of State (RG59), Miscellaneous Letters (Mfilm 179), reel 17: 60, NA [hereafter cited as Miscellaneous Letters].

41. See Pickering to Wolcott, 24 June 1800: "In conversation lately with Mr. Liston [the British minister], the pardoning of the three persons, Fries, Gettman and Hainey, Northampton Insurgents convicted of treason

and sentenced to be hanged, was mentioned; and the extraordinary measure of the President in consulting Mr. Lewis and Mr. Dallas, *the prisoners counsel*, instead of the *Judges*, to get information either as to the law or the facts, in the case; and that Lewis and Dallas gave their statements and opinion in writing, expressing it to be done at the request of the President. *Yes, said Mr. Liston, Mr. Dallas showed me the letter to the President:* and the spoke of its contents—mentioning the opinion of those gentlemen, to the best of my recollection, That the acts of those Insurgents amounted to *Sedition*, but not to *Treason*. But the fact of Mr. Dallas' showing the letter to Mr. Liston was the principal and only thing you desired me to state: and of that I am certain." Wolcott Papers, reel 1. Wolcott confirmed these facts when he was asked to make corrections to Hamilton's letter attacking the President, see Wolcott to Hamilton, 2 Oct. 1800, Harold C. Syrett, ed., *Papers of Alexander Hamilton*, 27 vols. (NY, 1961-87), XXV: 142-3 [hereafter cited as Syrett, ed., *Papers of Alexander Hamilton*].

42. See William Lewis to Hamilton, 11 Oct. 1800, *ibid.*, XXV: 151-7; William Rawle to Attorney General, 22 May 1800, William Lewis and Alexander J. Dallas to Attorney General, 18 May 1800, reel 397, Adams Family Papers. This letter is also printed in Wharton, ed., *State Trials*, pp. 646-8, although it is not dated and the explanation is provided by Pickering.

43. See Lewis and Dallas to Attorney General, 18 May 1800, *ibid.* There is some confusion of this point. There is no evidence that Lewis wrote an opinion after the first trial. District Attorney Rawle forwarded a brief memo to the Attorney General, which was then sent on to the President; see Attorney General to President, 28 May 1799, and Rawle to Attorney General, Adams, eds., *Works* VIII: 653, 648 n2.

44. Adams to Lloyd, 31 March 1815, Adams, ed., *Works*, X: 154. Attorney General Lee believed that Fries had committed treason; Attorney General to President, 28 May 1799, *ibid.*, VIII: 653.

45. Adams to James Lloyd, 30 March 1815, Adams, ed., *Works*, X: 152-3. Wolcott wrote: "Fries said after the trial to Mr. Wood (one of the chief Clerks of my office, who is also a clerk of the Prison) that *great men* were at the bottom of this business—I do not know his

meaning—B. McClenachan of the H. of Representatives was certainly an agitator among the Insurgents, but I do not know, nor do I believe that the Insurgents had any general views, other than to defeat the execution of the Act of Assessment [Direct Tax]. In general the people are ignorant, strongly prejudiced against the measures of Government—vindictive in their resentments, and I fear incapable of being influenced, except by their fears of punishment.” Sec. Treasury to President, 11 May 1800, reel 394, Adams Family Papers. See also his earlier letter, 18 Nov. 1799, reel 396. The three Republican state legislators denied that they had agitated against the national government; see Nicholas Kern, A. Thorn and Jonas Hartzell to the Public, *Kline’s Carlisle Weekly Gazette*, 10 April 1799.

46. An example of this appearance after the Northampton insurrection of an “Address the Germans in Cumberland County” criticizing the government. Sec. State Pickering asked the District Attorney to consider prosecuting the German newspaper. See Pickering to Rawle, 5 July 1799, Pickering Papers, reel 11: 390. When it was reprinted in *Porcupine’s Gazette*, 22 July 1799, there was no mention of William Cobbett violating the Sedition Act for republication of seditious material as others had been charged.

47. Speech to Both Houses of Congress, 3 Dec. 1799, Adams, ed., *Works*, IX: 137. See also Sec. of Treasury Wolcott, responding to the President’s request for ideas for this address: “To give energy to the Government it appears indispensable that the Judicial System of the United States should be revised. It cannot but happen that numerous questions respecting the interpretation of the Laws and the rights and duties of Officers and Citizens must arise in this extensive country. On the one hand, it is necessary that the laws should be executed; on the other that individual rights should be guarded against oppression—neither of these objects can be assured under the present organization of the Judicial Department.” Wolcott to President, 18 Nov. 1799, reel 396, Adams

Family Papers. Congressman William Cooper had expressed similar ideas to Wolcott earlier and observed: “Many Evils that exist in the United States might be remedied or cured by altering the Law for establishing Judicial Courts in the United States. I mean that of having more Judges in each State—or Magistrates with power to take up and try seditious persons to try all offenses against the Laws of the United States—There being at present but one District Judge—and their residence being the Capital of each state—the remote parts of our Country are kept in constant dissatisfaction with the General Government by the industry of its enemies. It is in the interior of the states that the vile Libels against government are disseminated with success. It is there the wicked feel themselves out of the view of Government. . . .” Cooper to Wolcott, 20 Aug. 1799, Wolcott Papers, reel 3, vol. 15 #43.

48. See Kathryn Turner, “Federalist Policy and the Judiciary Act of 1801,” *William and Mary Quarterly*, 3d ser., 22/1 (January 1965), 3-32.

49. For the Federalist criticism of the pardons, see Letter from Alexander Hamilton, Concerning the Public Conduct and Character of John Adams, Esq., President of the United States, 24 Oct. 1800, Syrett, ed., *Papers of Alexander Hamilton*, XXV: 226-8; see also George Cabot to AH, 23 Aug. 1800, *ibid.*, XXV: 77-9. Pickering to Samuel P. Gardiner, 21 June 1800, Pickering Papers, reel 13: 551; see also TP to James Pickering, 7 June 1800, *ibid.*, 13: 542. Both Marshal Nichols and District Attorney Rawle resigned about this time. Nichols had been implicated in financial improprieties as a collector of the revenue and finally left office. See: Wolcott to President, 27 June 1798, Nichols to Wolcott, 27 June 1798, reel 389, Adams Family Papers; and Nichols to President, 29 Nov. 1799, reel 396, *ibid.* Sec. of State Pickering sent Rawle’s resignation to the President, 6 May 1800, reel 397, *ibid.*

50 See Gary D. Rowe, “The Sound of Silence: *United States v. Hudson & Goodwin*, the Jeffersonian Ascendancy, and the Abolition of Federal Common Law Crimes,” *The Yale Law Journal*, 101/4 (January 1992): 919-48.