

**Congress, Civil Liberties, and the Fear Factor**  
**An Introductory Essay by Don Wolfensberger**  
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*Fear is the foundation of most governments.*<sup>1</sup>

–John Adams (1776)

**Introduction**

It is the thesis of this essay that the independence and early development of the new American Republic were founded on fear. The Declaration of Independence, the Constitution, and the Bill of Rights were based on alternating fears about the security and unity of the new nation, on the one hand, and the liberty of its citizens, on the other.

The ensuing history of the Republic reflects the ongoing tensions between the integral values of security and liberty. That history demonstrates that, over time, a rough balance has been struck between the two, due mainly to the operation of the Constitution’s checks and balances on the three branches of the Federal government and the influence of public opinion on all three.

**In the Beginning**

Most Americans are familiar enough with the ringing phrases of the Declaration of Independence about the self-evident truths of man’s equality and of certain God-given and unalienable rights to life, liberty and the pursuit of happiness. What is usually skipped over in any Fourth of July rendering of the Declaration is the detailed indictment or “train of abuses and usurpations” visited by the King of Great Britain upon the American colonies.

These abuses, running 28 paragraphs, not only involve interferences with the right to representation in legislative assemblies ( “He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the Rights of the People;”), but go to the most basic of aspects of individual liberty and privacy: quartering armed troops among the populace in times of peace (mentioned in two separate paragraphs), denying the right of migration and the right to trial by jury, imposing taxes without our consent, and erecting multitudes of new offices and sending “swarms of officers to harass our people, and eat out their substance.”

The document moves from a highly-principled, moral and philosophical plane to its earthly manifestations—from immortal truths to everyday abuses committed against average people. The Second Continental Congress was not merely issuing another treatise on the rights of man, but had devised a political and propaganda document aimed at influencing world and domestic opinion and at rallying support for the cause of American independence (few people realize today just how

divided this country was over separation from and war with Great Britain).

How better to arouse and move the people than to lay out for them the extent of abuses already suffered by their fellow-colonists, and to raise the awful specter of worse to come? “He is, at this time, transporting large armies of foreign mercenaries to compleat the works of Death, Desolation, and Tyranny, already begun with circumstances of Cruelty and Perfidy, scarcely paralleled in the most barbarous Ages, and totally unworthy[of] the Head of a civilized Nation.” Necessity may be the mother of invention, but fear is the mother of motivation.

The Declaration of Independence was the summation of the hopes and fears of the American colonists. Their worst fears had been realized by the King’s depriving them of their basic rights as Englishmen. Government is supposed to secure the rights of the people, deriving its just powers from the consent of the governed. But “whenever any form of government is destructive of these ends, it is the Right of the People to alter or abolish it” and form a new government built on the foundation of those principles, with its powers organized in a way that “to them shall seem most likely to effect their safety and happiness.” Thus, the motivating fear that led to the separation from Great Britain was the prospect that America’s colonists would forever be deprived of their basic rights.

The motivating fear that led to the formation of the new government under the Constitution of 1787 was the fear of failure; the Articles of Confederation (approved by the Continental Congress in November 1777 but not finally ratified until 1781) had already proven to be a huge failure. Unless rectified, the 13 states could easily dissolve into 13 separate republics. The motivating hope of the Founders in Philadelphia was that a new government could be designed in such a way as to avoid repeating the mistakes of forming either too weak a government, or too strong a government. There were legitimate fears expressed at the time that a new executive could become just as powerful as a king, leading to new form of tyranny and abuses of individual rights. Others, like Madison, felt the danger lay in the legislature where a majority faction could deny minority rights and property.

The debates of the Constitutional Convention in Philadelphia in the summer of 1787, and the subsequent ratification debates, are replete with echoes of these concerns. What form should the executive take, with what powers, and for what length of service? What powers should be given to the national legislature? What should be the length of terms of members of the legislature (“When annual elections end, tyranny begins”)? What about an independent judiciary? How should the military be regulated? How much authority and sovereignty should the states have compared to the national government? All of these questions, though, came back to the same basic concern of the Founders and that was how to protect the safety, security, and liberty of the people.

The resulting series of compromises enshrined in the Constitution boiled down to a separation of powers between the states and the national government, and between the branches, combined with a sharing of powers that would enable each to be a check on the other. As Madison put it in “Federalist No. 51,” “Ambition must be made to counteract ambition,” for “the separate and distinct exercise of the different powers of government. . . is admitted on all hands to be essential to the preservation of liberty.” Each department should “have a will of its own,” and “the necessary constitutional means and personal motives to resist the encroachment of others” which could lead to “the gradual concentration of the several powers in the same department.”<sup>2</sup>

Notwithstanding this intricate system of separation of powers and checks and balances, Madison worried in the same essay that a majority faction could emerge, leading to a suppression of the rights of the minority. It is important in a republic “not only to guard the society against the oppression of its rulers,” he wrote, “but to guard one part of the society against the injustice of the other part.” And he went on, “Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure.”

Madison thought this was not probable in a republic as vast as the United States because society will be broken into so many parts and interests “that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.” Justice is the end of government and of civil society, Madison observed, and will be pursued until it is obtained “or until liberty is lost in the pursuit.” Stronger individuals and powerful factions are prompted by the uncertainty of their condition “to submit to a government which may protect the weak as well as themselves,” and “to wish for a government which will protect all parties, the weaker as well as the more powerful.”<sup>3</sup>

In this case, it was the fear of uncertainty that would lead to the forming and acceptance of a strong enough governmental system to protect the rights of all parties, weak and strong. As the preamble to the Constitution made clear, the document was ordained and established by “We the People” in order “to form a more perfect Union, establish justice, insure domestic tranquility, provide for a common defense, *and secure the blessings of liberty to ourselves and our posterity.*” Security and liberty were interdependent and integral to the success of this new experiment in self-government.

### **Ratification and the Bill of Rights Debate**

Madison’s assurances that the new government was properly designed to protect the rights of all citizens was not persuasive with everyone. When Madison’s fellow Virginia delegate to the constitutional convention, George Mason, left the convention without signing the document on

September 17, 1787, he had scribbled his objections on a committee report. His list was picked up and published by the *Pennsylvania Packet* on October 4 and given the status of a minority dissent under the heading, “George Mason’s Objections.” The lead sentence of the short work read simply, “There is no Declaration of Rights.” As historian Robert Rutland puts it, that first sentence “struck home. Through the next ten months, try as they might, supporters of the Constitution. . . never were able to dispel the fears created by Mason’s opening war cry.”<sup>4</sup>

The idea of including a bill of rights in the Constitution was only broached twice during the debates of the convention. In the first instance, on August 20, Charles Pinckney of South Carolina submitted what amounted to a 13-paragraph bill of rights. According to Madison’s notes, “these propositions were referred to the Committee on Detail without debate or consideration of them by the House.”<sup>5</sup> When nothing emerged from the Committee on Detail, the issue was again raised on September 12 when one delegate noted the absence of any guarantee of a trial by juries. This led Mason to express the wish that “the plan had been prefaced by a bill of rights” since “it would give great quiet to the people.” Elbridge Gerry of Massachusetts moved that a committee be appointed to prepare a bill of rights. Roger Sherman of Connecticut rose in opposition, saying he was all “for securing the rights of the people” but that “State Declarations of Rights are not repealed by the Constitution,” and therefore should be sufficient. Mason countered that “the Laws of the U.S. are to be paramount to the State Bills of Rights.” With that brief debate, the motion was rejected, 0 states to 10, with Massachusetts abstaining.<sup>6</sup>

As it turned out, the failure to include a bill of rights in the Constitution proved to be an almost fatal miscalculation on the part of the delegates. According to Rutland, “At first, Madison was not mindful of the hue and cry over an omitted bill of rights.” Washington had sent Madison a copy of Mason’s pamphlet (which Mason had provided him), “and in reply Madison ignored the one which had the most public impact to dwell on matters of less substance.”<sup>7</sup>

The *Federalist*, a series of essays which Hamilton, Madison, and Jay coauthored under the pseudonym Publius to influence the ratification debate in New York, also gave short shrift to the objection that there is no bill of rights in the Constitution. In “Federalist No. 38,” Madison brushes aside the objection in two sentences: “Is a bill of rights essential to liberty? The Confederation has no bill of rights.”<sup>8</sup>

It is not until “Federalist No. 84,” that Hamilton tackles the objection in any depth (even though by the time of its likely publication on July 6, 1788, the last state, New York, had already ratified the Constitution). Employing sarcasm, Hamilton noted if all “the loud clamours against the plan of the convention” on that objection to the lack of a bill of rights were well founded, then “no

epithets of reprobation will be too strong for the constitution of this State [New York],” which also has no bill of rights. Yet both constitutions “contain all which in relation to their objects, is reasonably to be desired.” Going the heart of the argument as to why a bill of rights is not necessary in the national constitution, Hamilton wrote:<sup>9</sup>

Here, in strictness, the people surrender nothing; and as they retain everything they have no need of particular reservations. . . . Here is a better recognition of popular rights than volumes of those aphorisms which make the principal figure in several of our State bills of rights and which would sound much better in a treatise of ethics than in a constitution of government.

Although the first five states to ratify the Constitution did so in December 1787 and January 1788 without reservation, the danger signs began to appear in February when Massachusetts ratified with a recommendation that “certain amendments and alterations in the Constitution” be introduced to “remove the fears and quiet the apprehensions of many of the good people of this Commonwealth and more effectively guard against any undue administration of the Federal government.” One of the nine specific recommendations involved the rights of citizens.<sup>10</sup> South Carolina followed the lead of Massachusetts in recommending certain additional amendments, but not making ratification dependent on them. The real problems cropped up in Madison’s home state of Virginia where Patrick Henry and George Mason were conspiring to make a bill of rights a prior condition for ratification. Moreover, the New York and Virginia anti-federalists were collaborating in attempting to pass an identical set of amendments.<sup>11</sup>

Madison was forced to play catch-up ball, rushing back to Virginia from New York to run as a delegate to the Virginia ratifying convention in order to turn back the opposition forces. The resulting compromise engineered by Madison was two resolutions: the first, ratifying the Constitution while clarifying that every power not granted to the people by the Constitution “remains with them and at their will” and therefore that “no right of any denomination can be cancelled, abridged, restrained or modified” by the Congress or president acting in any capacity except where such powers are granted by the Constitution for such purposes. The resolution went on to list just two examples of these essential rights implicitly reserved to the people – “the liberty of Conscience and of the press.” The second resolution proposed a set of additional amendments to the Constitution to be considered by Congress as soon as it convened. Attached was a 20 part “Declaration or Bill of Rights asserting and securing from encroachment the essential and unalienable Rights of the People.” Following this Declaration of Rights to be included in the Constitution was a listing of 20 amendments to the body of the Constitution. New York followed Virginia’s lead in adopting a two resolution compromise.<sup>12</sup>

### **The First Congress and the Bill of Rights**

The Constitution's near death experience over the bill of rights controversy was enough to make a convert out of Madison, who was running for a House seat in Congress against his good friend, James Monroe. Madison's own political extinction was threatened when rumors circulated in the district among the Baptists that he opposed a bill of rights or specific guarantees of religious freedom. In response to a letter from a Baptist minister in his district, Madison conceded that he had once not seen the need for the inclusion of a bill of rights in the Constitution, however, "circumstances are now changed:"<sup>13</sup>

The Constitution is established on the ratification of eleven States [Rhode Island and North Carolina had not yet ratified] and a very great majority of the people of America; and amendments, if pursued with a proper moderation and in a proper mode, will be not only safe, but may serve the double purpose of satisfying the minds of well meaning opponents and of providing additional guards in favor of liberty. Under this change of circumstances, it is my sincere opinion that the Constitution ought to be revised.

He added that such right should include "all the essential rights, particularly the rights of Conscience in the fullest latitude, the freedom of the press, trials by jury, security against general warrants, etc." With that assurance, Madison went on to beat Monroe for the congressional seat by a comfortable margin. Not only did Madison keep his commitment to support a bill of rights as further amendments to the Constitution in the First Congress, but, as President Washington's de facto floor leader in the House, he took it upon himself to lead the effort, much to the consternation of many fellow Federalists who still considered the effort unnecessary. He first put together a list of some 209 proposals submitted by the various states, then winnowed them down to just 19, avoiding those which would alter the structure of government, and by focusing only on those which guaranteed certain civil liberties.

Because very few Anti-Federalists had bothered to run for Congress, their forces were not strong enough to further expand the amendments to include provisions for term limits on members, senators, and the President, or the ability of the people to instruct their representatives, though it was not for lack of trying. Madison succeeded in passing his set of 19 amendments without further alteration, and the Senate followed suit, but consolidated them into 12 amendments. The first ten of which, now known as the Bill of Rights, were ratified two years later in December 1791. Rhode Island and North Carolina were satisfied with what Madison had been able to achieve, and joined the Union.

It is fair to say that just as the fear of liberty being denied had been the foundation of the new

government, the fear factor also played a significant role in altering that government shortly after its inception. It was again the fear of the government depriving the people of their rights, only this time it was the government they themselves had formed to avoid the tyranny of the King. The Declaration's assertion of the right of the people to alter their form of government if it became destructive of their rights had been put to the test in a preemptive manner. The Constitution's provision for a means of altering the document had also been put to an early test and proven workable.

Today the Bill of Rights is considered an integral part of the Constitution and of our birthright as citizens. The First Amendment, in particular, with its freedoms of religion, speech, press, assembly, and petition is one of the most invoked, cited, contested, contracted and expanded upon of the ten. But, just as important are the other amendments involving the safety and sanctity of citizens, their homes and property against unreasonable governmental searches and seizures, trials without juries or counsel, cruel and unusual punishment, and self-incrimination.

### **The Alien and Sedition Acts**

Just seven years after the Bill of Rights was ratified, Congress enacted four laws which became known collectively as the Alien and Sedition Acts. Once again, fear was a factor in moving the Congress, only this time it was in the opposite direction of protecting the civil liberties of the people. As historian Alvin M. Josephy, Jr. has observed:

These last measures stemmed from a paranoid fear that the pro-French Republicans had become a threat to the nation's survival and also from a determination by some Federalists to muzzle opposition and criticism within the country until the crisis had passed.<sup>14</sup>

Historian David McCullough writes that the Alien and Sedition Acts must be seen in the context of the times, "and the context was tumult and fear. . . . There was rampant fear of the enemy within. . . . The United States was at war—declared or not—and there were in fact numbers of enemy agents operating in the country."<sup>15</sup>

What had precipitated the crisis was France's breaking of diplomatic relations with America over the Jay Treaty with England. France promised to take retaliatory measures against American shipping and soon did, seizing U.S. ships on the high seas and confiscating their cargoes. The French actions stirred a patriotic fervor in the country, aimed at France. John Adams, recently inaugurated as President, called Congress into special session on May 15, 1797, to announce that he was sending a three-member peace mission to France in an attempt to avoid war, but also to ask Congress to pass measures for the defense of the country should it become necessary. Congress

passed some of the measures, but withheld others pending word from the peace delegation.

France's continued belligerence, meantime, broadened Adams's support in both houses in the second session of the Fifth Congress and produced increasing intolerance toward the opponents of the administration. When the peace mission failed, and it was disclosed that it had been importuned for a \$12 million loan to France plus a \$250,000 bribe for its Foreign Minister, Talleyrand, anti-French feelings turned into a national frenzy. By mid-April 1798, rumors that the French were about to invade the United States increased the excitement level, and roaming mobs began physically attacking pro-French Republicans and editors. It was in this atmosphere that the Federalists in Congress pushed through some 20 bills aimed at bolstering the nation's defense, including the now infamous Alien and Sedition acts.<sup>16</sup>

The four acts included: the Naturalization Act which extended from five to fourteen years the length of residency necessary for citizenship; the Alien Act which authorized the President to deport any alien considered dangerous to the public safety or suspected of "treasonable or secret" tendencies; the Alien Enemies Act which authorized the President during time of declared war to arrest, imprison or deport aliens who were subject to an enemy power; and the Sedition Act which carried a fine of up to \$2,000 and imprisonment for up to two years for anyone convicted of writing, publishing, or speaking anything "false, scandalous and malicious" against the United States government, its President, or either house of Congress, of entering into unlawful combinations to oppose the execution of national laws, or of aiding or attempting "any insurrection, riot, unlawful assembly, or combination."<sup>17</sup>

Despite their oppressive nature and constitutional violations, the acts, sponsored by Federalist members of the House and Senate, were signed into law by Adams. Adams never invoked his authority under the Alien Act to deport a "dangerous person." The Alien Enemies Act was never in force because war had not been declared. Both acts were allowed to expire in June 1800. Nevertheless, their mere existence caused the voluntary departure from the country of a number of Frenchmen.

The Naturalization Act had appealed to the fear of immigrants—particularly that large numbers of immigrants from Ireland would support the Republicans and pro-French ideas and movements. Federalist Representative Harrison Ray Otis of Massachusetts put the fear in stark terms: "If some means are not adopted to prevent the indiscriminate admission of wild Irishmen and others to the right of suffrage, there will soon be an end to liberty and property." The Act was repealed in 1802 in favor of the milder law of 1795 (a five, rather than 14 year, residency requirement for citizenship).<sup>18</sup>



The Sedition Act, though, whose vigorous enforcement was advocated by Secretary of State Timothy Pickering and Supreme Court Justice Samuel Chase, created the greatest storm of controversy in the country. The Republicans called the Act's enforcement "an American reign of terror" against the liberties supposedly protected by the Constitution and Bill of Rights. All told, 25 persons were arrested under the terms of the act, including editors of leading Republican newspapers, and ten were convicted and sent to jail. Among those arrested was Matthew Lyon, a Member of Congress from Vermont, who was accused of making slanderous allegations against President Adams. He was convicted and sentenced to four months in prison, making him a martyr for liberty and ensuring his re-election to Congress by his outraged Vermont constituents.<sup>19</sup>

The excesses of the Sedition Act eventually led to a reaction in the form of the Kentucky and Virginia "nullification resolutions," secretly drafted by Jefferson and Madison, which asserted the supremacy of the states over the Federal Government. The Kentucky resolution, for instance, held that a state could nullify any Federal laws the state considered to be in violation of its constitutional rights. The Federalists argued that it was the Supreme Court, not the states, that should determine the constitutionality of Federal law.<sup>20</sup> Nothing came of the resolutions though the sentiments behind them would play a large part in the debates leading up to the Civil War.

The presidential elections of 1800 resulted in a landslide victory for the Republicans and their presidential candidate, Thomas Jefferson, and a repudiation of the Federalists, who lost 40 seats in the House. The main factors in the "revolution of 1800" were national opposition to the Alien and Sedition Acts, the Federalist's land tax, resentment over the loss of trade to France, and the growth of anti-British sentiment prompted by that country's impressment of American seamen. In his first annual message to Congress in December 1801 (delivered in writing), Jefferson promised to reduce spending and debt, cut the army and navy, repeal excise taxes, support the states "in all their rights," and end such abuses to liberty as the Alien and Sedition laws. The Alien Act had expired in 1800 by limitation and the Sedition Act on March 3, 1801, the day before Jefferson's inauguration as President. One of his first acts as President was to pardon all of those convicted under the Sedition Act. At Jefferson's urging, Congress would later reimburse the convicted journalists for the fines they had paid.<sup>21</sup>

### **Wilson and Civil Liberties**

As a scholar, Woodrow Wilson often criticized the U.S. constitutional system of separated powers and checks and balances as an outmoded Newtonian approach to politics and government. The Founders drew heavily on British Whig theorists and Montesquieu in devising a constitution under which "the President is balanced off against Congress, Congress against the President, and

each against the courts.” Our statesmen, continued Wilson, quoted Montesquieu “as a scientific standard in the field of politics” in which “politics is turned into mechanics under his touch,” and the theory of gravitation is supreme.” The trouble with the theory, Wilson wrote, is that “government is not a machine, but a living thing. . . . accountable to Darwin, not Newton. . . . modified by its environment, necessitated by its tasks, shaped to its functions by the pressure of life. No living thing can have its organs set against each other as checks, and live.”<sup>22</sup>

By 1908, though, Wilson had reconciled himself to the possibility that the kind of unified, party government that he preferred could be achieved without altering the Constitution. “Fortunately,” Wilson wrote, “the definitions and prescriptions of our constitutional law, though conceived in the Newtonian spirit and upon the Newtonian principle, are sufficiently broad and elastic to allow for the play of life and circumstance.” The Framers, Wilson concluded, “were also practical statesmen . . . and they have given us a thoroughly workable model.” As he went on to explain, “If it had in fact been a machine governed by mechanically automatic balances, it would have had no history; but was not, and its history has been rich with the influences and personalities of the men who have conducted it and made it a living reality.”<sup>23</sup>

It was this rationale that allowed Wilson to think more boldly about the potential of the presidency. In just a few pages of his 1908 work, *Constitutional Government*, he projected how vast this potential was: “The President is at liberty, both in law and conscience, to be as big a man as he can;” “His office is anything he has the sagacity and force to make it;” “He has become the leader of his party and the guide of the nation in political purpose and legal action;” “The personal force of the President is perfectly constitutional to any extent to which he chooses to exercise it;” His control of the foreign relations of the nation “is very absolute.”<sup>24</sup>

Four years after the publication of *Constitutional Government*, Wilson was elected President and was able to put his theories into practice. He was largely successful in his first two years in enacting his New Freedom domestic legislation by working closely with a Congress of his own party, already organized along the lines of his party government model. When he began to assert “absolute” authority over national security matters with the approach of World War I, he ran up against bipartisan resistance in Congress on some of his proposals for national defense and security, both at home and abroad, though he still got most of what he wanted. According to political scientist Daniel Stid: “Southern Democrats led the opposition to conscription. . . . Prominent Democratic leaders like Speaker Champ Clark and Senator Robert Owen sided with the Republicans protesting against government censorship of the press.” Wilson was sensitive to the criticism, says Stid, “but he was not a civil libertarian. While Wilson was unwilling to compromise on the most

important parts of his legislation, “insisting that legislators had to defer to the executive judgments embodied in the administration’s proposals,” he finally was forced make some concessions on his censorship proposals in order secure the key components of his other bills.<sup>25</sup>

Nevertheless, Wilson was still able to push through several measures which, Alvin Josephy writes, represented a break in the progressive era’s benign atmosphere of political tolerance and freedom of dissent and “seriously abridged civil liberties and traditional American rights.”<sup>26</sup> The measures were supported with fervent patriotism and anti-German sentiment by a great majority of the American people and their representatives in Congress. The Espionage Act passed by Congress in June 1917 was designed to fight disloyal and treasonable activities by imposing heavy fines and jail sentences for such actions as spying, sabotage, refusing to serve in the military, interfering with military recruitment, and aiding the enemy. The Act authorized the postmaster general to exclude from the mails materials he determined to be seditious. The Sedition Act of May 1918 provided even harsher measures covering a variety of crimes ranging from using “disloyal, profane, scurrilous, or abusive language about the U.S. government, the Constitution, the flag, or the military forces.”<sup>27</sup> The Alien Act of 1918 provided for the deportment without trial of foreign residents in the United States suspected of disloyalty or even accused of membership in an organization that advocated the violent overthrow of the government.

Under the Espionage and Sedition acts, numerous pacifists, conscientious objectors, and political dissidents were arrested. Among these were three-time Socialist presidential candidate Eugene Debs who was sentenced to ten years in prison for propaganda, and Victor L. Berger, a Socialist Representative from Wisconsin who was sentenced to 20 years in prison—a sentence overturned by the Supreme Court. Even with the end of the war, the hysteria continued, with the new fear being the possibility of revolution. The domestic violence stemming from postwar labor disputes and bomb-throwing anarchists and militant radicals contributed to a “Red Scare” that Wilson’s attorney general, Mitchell Palmer, used in a repressive campaign against thousands of suspects, relying on the wartime sedition measures, “outdoing all previous violations of civil liberties and receiving widespread support.”<sup>28</sup>

“Most of the country’s fears were finally proved groundless,” according to Josephy, “public opinion turned against the excesses of the anti-radical crusade, and the turmoil quieted.”<sup>29</sup> Political scientist Daniel Stid writes that, “One explanation for the GOP victories [in recapturing Congress in 1918] that enjoyed wide credence among disenchanted progressives was that the Wilson Administration’s curtailment of civil liberties had strangled the organs of opinion and general goodwill on the American left that had sustained the President in 1916.”<sup>30</sup>

Stid concludes that, “Wilson’s vigorous executive leadership” during this period “required him to put aside his own notions of responsible government and ‘common counsel’ . . . . The leading critic of the “Newtonian” Constitution thus had come to view it differently in the sharp light of his wartime experience.” The controversies arising from the war had “overwhelmed a tenuous assumption . . . that legislators and politicians would defer to the necessity of presidential leadership in matters of war and peace.” Wilson could still push for control of national security policy, but to do so in the face of opposition in Congress and within his own party “would require him to act as an independent and energetic executive, not as the prime minister of a responsible party.”<sup>31</sup>

### **Conclusions**

The cross-currents of security and liberty have buffeted our fragile democracy from its inception with a climate of fear often determining the prevailing force. The events of the early Republic, from Independence to the election of Jefferson in 1800, demonstrate how quickly the winds can shift direction as public opinion changes. The war years under Woodrow Wilson attest to the cyclical nature of this pattern. The Congress of the United States is a veritable weather vane in this regard. When the winds of war blow, Congress can usually be counted on to support the President’s requests to strengthen the national defenses and internal security measures.

Motivated by the fear of external and internal threats to security, Congress does not always react with scientific precision to ensure that the response is commensurate with the threat. Because the nature, scope and duration of the threat cannot always be known, Congress is likely to err on the side of excess. Wilson was right: Newton’s laws of physics do not apply to politics and government. Instead, the law of political motion should sometimes read: “For every action there is an unequal and opposite overreaction.” It is not unusual for a Congress or a President to seek the maximum security possible within constitutional limits--though, as we’ve seen, not always succeeding. At times, one branch or the other overreacts and overreaches, and is sometimes pulled back by the other. At other times, only court intervention can turn back ill-advised limits on the liberties of the people. Yet at other times, especially in the midst of a war, the courts have sidestepped the issue or upheld such restraints. Eventually, though, public opinion shifts in reaction to perceived excesses, and the President and Congress respond accordingly. If one were to make a soap opera out of this ongoing swing between security and liberty, it would probably be called, “As the Pendulum Swings.” If it were reality TV, it would be called, “The Fear Factor.”

In the final analysis, the Founders’ carefully devised scheme of separated powers and checks and balances to guard against the abuse of liberty has served the country well over the last two

centuries. As was true from the founding, preserving that liberty depends on eternal vigilance.

### Notes

1. John Adams, "Thoughts on Government," originally written as a letter to fellow congressman William Hooper of North Carolina, May 1776.
2. Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: New American Library, Mentor Books, 1961), 321-322.
3. Ibid, 323-325.
4. Robert A. Rutland, "Madison's Career Peak: The Federal Convention of 1787," in *Papers on the Constitution*, ed. John W. Elsberg (Washington, D.C.: Center of Military History, United States Army, 1990), 40.
5. *Documents Illustrative of the Formation of the Union of the American States*, ed. Charles C. Tansill, H. Doc. 398, 68<sup>th</sup> Congress, 1<sup>st</sup> sess. (Washington, D.C.: U.S. Government Printing Office, 1927), 571-73.
6. Ibid, 716.
7. Rutland, op. cit., 41.
8. *Federalist Papers*, op. cit., 238.
9. Ibid, 513.
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11. Rutland, op. cit., 44-45.
12. *Documents*, op. cit., 1027-1032.
13. Rutland, op. cit., 46.
14. Alvin M. Josephy, Jr., *The Congress of the United States* (New York: The American Heritage Publishing Company, 1975), 114.
15. David McCullough, *John Adams* (New York: Simon and Schuster, 2001), 506, 505.
16. Josephy, op. cit., 112-114.
17. Ibid, 114.
18. Ibid, 115.
19. Ibid.
20. Ibid, 116.

21. McCullough, op. cit., 506.
22. Woodrow Wilson, *Constitutional Government in the United States* (New Brunswick, N.J.: Transaction Publishers, 2002; originally published in 1908 by Columbia University Press), 56.
23. Ibid, 57.
24. Ibid, 68-78.
25. Daniel D. Stid, *The President as Statesman* (Lawrence, Kansas: University of Kansas Press, 1998), 128, 138.
26. Josephy, op. cit., 327.
27. Ibid.
28. Ibid, 327-28.
29. Ibid.
30. Stid, op. cit., 148.
31. Ibid, 135.