THE INSEPARABLE RIGHTS OF ALIENS:
PETITIONS AGAINST THE ALIEN AND SEDITION ACTS, 1798-1799

Master's Thesis

North American Studies

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Date: June 21, 2019

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Introduction

In the first days of February 1799, several natives of Ireland from Philadelphia organized a local meeting to discuss the Alien and Sedition Acts. This package of laws was authorized by the John Adams administration six months earlier and included three laws concerning the status of aliens and a law that made seditious libel a crime.[1] Concerned the laws restrained the freedom of speech and excluded foreign-born residents, the participants decided to draw up a petition to Congress praying for a repeal of the acts. Specifically, the petitioners argued the Alien Friends Act violated the Constitution and claimed alien residents "ought not (…) to be deprived of their rights by its posterior provisions." The Philadelphia meeting also appointed a committee of four men with the responsibility to obtain signatures. Among them were a naturalized Irish citizen, James Reynolds, and an Irish alien, Samuel Cuming. On February 9, the committee met in the yard of the St. Mary's Catholic Church to gather signatures from the Irish church members. After all, foreign residents were mainly targeted by the legislation. Quickly, however, a fight broke out between the four and some members of the church. Subsequently, the committee was arrested and stood trial for assault and riot. The prosecution accused the committee for attempting to form "a dark conspiracy (…) to overthrow not alone the Constitution but to subvert the very principles of our government." The prosecutors proclaimed: "these natives of Ireland! – hah! These Irishmen are Jacobins, and of course they will sign nothing but a Jacobinical address!" The defense responded the authorities could not prohibit the people's constitutionally secured right to petition, even though some of them

[1] The three laws concerning aliens were the Naturalization Act of 1798, the Alien Friends Act of 1798, and the Enemies Act of 1798. The Naturalization Act of 1798 amended the existing Naturalization Act of 1795 and determined immigrants had to wait fourteen years to become citizens, instead of the initially prescribed five years of residence. Furthermore, the law required the registration of all white aliens who arrived or already resided in the United States. If foreigners did comply with the mandatory registration, they could face a fine. Shortly afterwards, the Federalists introduced the Alien Friends Act. This provision provided the executive branch to incarcerate or deport any foreigner the president deemed dangerous to the safety of the United States. While the Alien Enemies Act provided the president with the same power to remove foreigners, the law was never used as it only applied in the event of war. See, *Statutes at Large of the United States,* I (1845), 566-572; 577-578; 596-597.

were aliens. They asked, "have aliens then no rights, no claims to freedom or justice?" They pointed out the memorial of the aliens was certainly justified as the Alien and Sedition Acts were already "declared to be unconstitutional by a respectable minority in Congress, and by a very large portion of the people." Luckily, the jury agreed and acquitted the committee of all charges brought against them.[2]

By 1799, people throughout the country had already sent numerous petitions to Congress and the state legislatures to protest the legislation. However, the Philadelphia petition was one of the first of such remonstrances against the Alien and Sedition Acts drafted by foreigners. The petition effort, maximized by the circulation in newspapers, triggered a national debate in Congress over the legislation. Historians have often assumed this debate was inconclusive as the Federalist majority in Congress refused to repeal the Alien and Sedition Acts. Nevertheless, the congressional debate offers insights into the constitutional issues of the early Republic. Among others, the petitions ignited debate over the constitutional question about the legal status of aliens residing in the country. Since this part of the narrative of the Alien and Sedition Acts has been largely ignored by historians, a study on the importance of the protest movement in determining the legal status of aliens can enrich existing scholarship. Before the outline of this research is introduced, the historiography on the Alien and Sedition Acts requires further attention.

[2] William Duane, *A Report on the Extraordinary Transactions* (Philadelphia: Philadelphia: Printed at the office of the Aurora, 1799), 1-2; 12-28. In fact, the opposition to the Alien and Sedition Acts only declared the Alien Friends Act and Sedition Act unconstitutional. Although objections were raised against the Naturalization Act of 1798, the opposition did not consider the law unconstitutional. As Article 1, Section 8 of the Constitution states, Congress has power "to establish an uniform Rule of Naturalization." See, U.S. Constitution, art. 1, sec. 8, cl. 4. For the purpose of this study, the term "Alien and Sedition Acts" only concerns the Alien Friends Act and Sedition Act, unless mentioned differently.

Historiography

The Alien and Sedition Acts

The petition from Philadelphia is important to our understanding of post-revolutionary politics and the opposition against the Alien and Sedition Acts for several reasons. First, the petition demonstrates various misconceptions by historians on the passage and opposition to the acts. For a long time, historians assumed the Federalists exceeded their powers in 1798 in their attempt to enact and enforce regulations against aliens and the press. Two works that have contributed to this understanding of the Alien and Sedition Acts are John Miller's *Crisis in Freedom* and James Morton Smith's *Freedom's Fetters*. These studies emerged in response to McCarthyism in the 1950s and interpreted the controversy surrounding the Acts from a civil libertarian perspective. Miller and Smith argued that a close study of the correspondence of the political elite, partisan newspapers and congressional records revealed that the legislation and the enforcement of the Sedition Act against pro-Republican printers were part of an unjust political campaign against the Republicans in the name of national security. During the diplomatic crisis with France, the Federalists used the threat of a French invasion to limit the growth of the Republicans' large base of immigrant voters and to dismantle the pro-Republican press as an instrument of influence. According to the authors, however, the legislation soon backfired as it was deeply unpopular at the time it passed. Therefore, Miller and Smith concluded the draconian measures proved politically fatal for the Federalists and swept President John Adams out of office during the elections of 1800.[3]

Recent scholarship has refused to portray the passage of the Alien and Sedition Laws as a "desperate act of a beleaguered faction" and instead explained the controversy as a struggle over

[3] James Morton Smith, *Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties* (Ithaca: Cornell University Press, 1963), 10-26; 159-187; 420-423; John C. Miller, *Crisis in Freedom: The Alien and Sedition Acts* (Boston: Little Brown and Company, 1951), 4.

the character of leadership and citizenship.[4] In the 2016 publication of *The Alien and Sedition Acts of 1798* Terri Halperin described the motivations of the Federalists as an attempt to impose their vision of the "proper role of the people in a republic."[5] While Republicans advocated a more engaged citizenry who were watchful of their rights and suspicious of the potential abuse of power by the government, the Federalists envisioned a passive citizenry that would only express its opinions through the election of representatives. They suggested the people's responsibility was to trust the government to enforce the common good. However, during the 1790s the Federalists became increasingly worried critical publications of their policies by the pro-Republican press undermined the people's confidence in the national political leadership. Furthermore, they were concerned by the wave of political and religious refugees from Europe and Haiti, who, according to the Federalists, brought their radical ideas with them to the United States. Printers and foreigners, Halperin wrote, were therefore identified as sources of unrest that could undermine the stability of the American republic. Concerns about the political influence of these groups peaked in 1798, as relations with France reached a new low after the XYZ affair. Fearing the threat of a French invasion and the collapse of their constitutional order, the Federalists viewed obstacles to citizenship and media restrictions as necessary conditions to maintain national security.[6]

Joanne B. Freeman explored the enactment and enforcement of the Sedition Act in the cultural context of the 1790s and reached a similar conclusion concerning the motives of the

[4] Joanne B. Freeman, "Explaining the Unexplainable: The Cultural Context of the Sedition Act," in *New Directions in American Political History*, ed. Meg Jacobs, William J. Novak, and Julian E. Zeilzer (Princeton: Princeton University Press, 2009), 24.
[5] Terri Diane Halperin, *The Alien and Sedition Acts. Testing the Constitution* (Baltimore: John Hopkins University Press, 2016), 167.
[6] Ibid., 13-14; 50-56; 66-69. Furthermore, James P. Martin studies the rhetoric of the Federalists in the 1790s surrounding the Sedition Act and has challenged the view promoted by Smith, Levy and others that the Federalists were anti-democrats. See, James P. Martin, "When Repression is Democratic and Constitutional: The Federalist Theory of Representation and the Sedition Act of 1798," *The University of Chicago Law Review* 66, no. 1 (1999).

Federalists. Her main contribution is the discovery of the importance of honor in the early Republic and how this notion drove the actions of the political elite. Despite the emergence of political factions in the 1790s, Freeman explained the character of politics in post-revolutionary America was still very personal and therefore the authority of the new government rested substantially on the reputation of its political leaders. The Federalists became concerned with the influence of the pro-Republican press and its criticism on public officials because "by slashing at the honor and reputation of the national elite, seditious libel slashed at the credibility and authority of the government." Like Halperin, Freeman therefore concluded the Federalists were motivated by the need to protect the nation against "demagogic tools aimed at inspiring opposition to the Federalist regime and, for that reason, potentially dangerous in time of war."[7]

The Philadelphia petition further demonstrates that dominant scholarship has neglected other forms of opposition against the acts by focusing on the role of political elites such as Thomas Jefferson and James Madison in drafting the Kentucky and Virginia resolutions. In his grand

[7] Freeman, "Explaining the Unexplainable: The Cultural Context of the Sedition Act," 22-24; 28-31. For explanation of the culture of honor in early national politics, see Joanne B. Freeman, *Affairs of Honor: National Politics in the New Republic* (New Haven: Yale University Press, 2001). Both Halperin and Freeman have built on Gordon S. Wood's understanding of the democratization of post-revolutionary society for their research on the Alien and Sedition Acts. Wood argued in *The Creation of the American Republic, 1776-1787* that the emergence of a liberal, democratic and capitalistic society in the beginning of the nineteenth century was part of a process set in motion by the Revolution. Wood viewed the design of the Constitution as an elitist reaction to the democratic tendencies released by the Revolution, and specifically, the self-interested behavior of popular elected state legislatures. In the eyes of the supporters of the Constitution, the Federalists, only the liberally educated gentry qualified for the leadership of republican government, since their "independence, education, and capacity to rise above their private interests would enable them to act impartially for the good of the public." However, Wood argued the Federalists' efforts to hinder the participation of ordinary men in politics failed. He depicted the battle of the Federalists as a futile and desperate attempt to prevent the development of a democratic and capitalistic society that emerged from the Revolution. Moreover, Wood assumed the Federalists hastened this process by employing the egalitarian rhetoric of the Revolution to ensure the ratification of the Constitution. By the 1790s, Wood concluded, the pursuit of individual and group interests had become a central feature of American politics. See, Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill: University of North Carolina Press, 1998), viii; 53-59; 474-476; Gordon S. Wood, "Disinterestedness in the Making of the Constitution," in *Beyond Confederation: Origins of the Constitution and American National Identity*, ed. Richard Beeman, Stephen Botein, and Edward C. Carter II (Chapel Hill: The University of North Carolina Press, 1987), 71-77; Gordon S. Wood, *The Radicalism of the American Revolution* (New York: Vintage Books, 1993), 146-148; Gordon S. Wood, *Empire of Liberty: A History of the Early Republic, 1789-1815*, vol. 4, The Oxford History of the United States, (Oxford: Oxford University Press, 2009), 24-48.

narrative of the early Republic, *Empire of Liberty*, Gordon Wood for instance is primarily occupied with their secret involvement in the formal reactions by the legislatures of Kentucky and Virginia from November and December 1798. In this way, Wood – and with him many other authors - have failed to acknowledge other forms of opposition. Even before the legislatures of Kentucky and Virginia issued their formal protests, thousands of citizens and non-citizens throughout the country already had affixed their signatures to memorials and petitions praying the federal government to repeal the Alien and Sedition Laws. Some historians have examined the importance of the resistance of the Republican press to the Federalist policies, yet these studies were mostly concerned with the responses of the media to the Sedition Act. For instance, in the accounts of both Michael Durey and Thomas Hopson the efforts of the Republican press were successful in turning public opinion against the legislation and vital to the presidential election of Jefferson in 1800.[8]

Douglas Bradburn is one of the few scholars whose history of the opposition has moved beyond the narrative of the political elite and the Kentucky and Virginia resolutions. Instead, Bradburn has argued the opposition against the Alien and Sedition Laws was "the concerted effort of numerous local communities not only in Virginia and Kentucky but also in Pennsylvania, New Jersey, New York, Vermont, and elsewhere."[9] As such, Bradburn has recognized the dissent against the Alien and Sedition Laws was widespread, large-scale and even organized. He has

[8] Wood, *Empire of Liberty: A History of the Early Republic, 1789-1815*, 268-72; Stanley M Elkins and Eric Mckitrick, *The Age of Federalism: The Early American Republic, 1788-1800* (New York: Oxford University Press, 1993), 723-729. See also, Saul Cornell, *The Other Founders: Anti-Federalism and the Dissenting Tradition in America, 1788-1828* (Chapel Hill: University of North Carolina Press, 1999), 239-245. Michael Durey, *Transatlantic radicals and the early American republic* (Lawrence: University Press of Kansas, 1997); Thomas Hopson, Honorable Disobedience: The Sedition Act and America's Partisan Martyrs, 2016, Yale University. Other studies that have focused on the reaction of the Republican press to the Sedition Act are Jeffrey L. Pasley, *The Tyranny of Printers: Newspaper Politics in the Early American Republic* (Charlottesville: University of Virginia Press, 2002); Freeman, "Explaining the Unexplainable: The Cultural Context of the Sedition Act."

[9] Douglas Bradburn, "A Clamor in the Public Mind: Opposition to the Alien and Sedition Acts," *The William and Mary Quarterly* 65, no. 3 (2008): 566.

situated the Kentucky and Virginia resolutions in a broader opposition movement that employed different strategies to protest the legislation. According to Bradburn, these protesters uttered their grievances not only through newspaper articles, but also by participating in mass meetings and protests, composing songs and erecting liberty poles throughout the states. Constituents sent their representatives several petitions emphasizing the unconstitutionality of the acts and the infringement of the rights of the persons under consideration. The opposition to the acts did not immediately produce the desired result; the Alien Friends Act and Sedition Act were not repealed by the Federalists but expired after Jefferson assumed the presidency. However, Bradburn has pointed out the broad resistance "supplied the original momentum, organization, and ideology that would strip Adams of the presidency."[10]

Popular Sovereignty

The Philadelphia petition further provides evidence the petitioners demanded that the Constitution could be interpreted and implemented by themselves. According to several scholars of early history of American constitutionalism, this was not considered a radical view in post-revolutionary America. Indeed, these accounts note that for many eighteenth-century Americans the concept of popular sovereignty implied that the final authority over constitutional interpretation rested with the sovereign people. In *The People Themselves* Larry D. Kramer demonstrates that before, during, and after the Founding, the people themselves exercised active and ongoing control over the interpretation and enforcement of their constitution – a notion that he terms "popular constitutionalism."[11] The ideology that the responsibility of constitutional interpretation ultimately

[10] Ibid., 565-567; Douglas Bradburn, *The Citizenship Revolution. Politics and the Creation of the American Union, 1774-1804* (Charlottesville: University of Virginia Press 2009), 170-171; 181-186.
[11] Larry D. Kramer, *The People Themselves. Popular Constitutionalism and Judicial Review* (New York: Oxford University Press, 2004), 8.

resided with the people was also embraced by the Framers.[12] As the Constitution "was fundamentally, an act of popular will," Kramer points out, "the idea of turning this responsibility over to judges was simply unthinkable." By the 1790s, however, the Federalists introduced a competitive doctrine of judicial supremacy as an attempt to limit the interpretative authority of the people. Like Halperin, Kramer illustrates the Federalists viewed the violence and chaos of the French Revolution as evidence popular politics should be constrained. As such, the Federalists designated the courts as the sole and final authority to interpret constitutional issues. Of course, Republicans disagreed with the Federalists' view of judicial authority. Through the Kentucky and Virginia resolutions and Madison's Report of 1800, the Republicans emphasized the importance of popular constitutionalism and declared the federal judiciary as a final resort to decide constitutional issues. Madison noted in his report, "the authority of the constitutions over governments, and of the sovereignty of the people over constitutions, are truths which are at all times necessary to be kept in mind."[13] According to Kramer, American constitutional history was from that moment onwards marked by a struggle between legal aristocracy and popular democracy over constitutional interpretation.[14]

The People Themselves ends on a more pessimistic note, however. Even though the ideology of popular constitutionalism dominated constitutional law in the first half century after the Founding, after the 1830s the principle was gradually abandoned and replaced by judicial

[12] Whereas Kramer characterizes history as a continues struggle between elites and the people, he disagrees with historians such as Gordon Wood, who view the design of the Constitution ultimately as an elitist reaction to the democratic tendencies released by the Revolution, and specifically, the self-interested behavior of popular elected state legislatures. Instead, Kramer argues the Founders embraced popular constitutionalism and therefore, we should take the invocations of the "excesses of democracy" of the Framers less seriously. He concludes, "certainly the Founders were concerned about the dangers of popular government, some of them obsessively so. But they were also captivated by its possibilities and in awe of its importance." See, Wood, *Empire of Liberty: A History of the Early Republic, 1789-1815*, 36-39; Kramer, *The People Themselves*, 5-6.

[13] James Madison, *Report on the Alien and Sedition Acts* (January 7, 1800), 614, in: Kramer, *The People Themselves*, 137.

[14] Ibid., 5-7; 133-139; Daniel J. Hulsebosch, "Bringing the People Back In," *New York University Law Review* 80 (2005): 654-656.

supremacy. By 1834, even Madison could no longer defend the primacy of popular constitutionalism and had to admit constitutional issues "find their ultimate discussion and operative decision [in the courts]."[15] Kramer views the more prominent role of the courts as the triumph of legal aristocracy over popular democracy. He compares twenty-first century advocates of judicial supremacy to the aristocratic Federalists of the 1790s: "committed to the idea of popular rule, yet pessimistic and fearful about what it might produce and so anxious to hedge their bets by building in extra safeguards." As a result of judicial supremacy, he points out, civic engagement on constitutional issues has stagnated, and thus has weakened democracy. Based on the historical origins of popular constitutionalism, Kramer argues judicial supremacy should be restrained and calls on the people to "assume once again the full responsibilities of self-government." As a solution he proposes a constrained form of judicial review which is derived from Madison's theory of departmentalism. According this theory, judicial review is not rejected, but the power over constitutional interpretation is divided equally among the three branches of government. In this respect, "the final interpretative authority rests with the people themselves." As such, Kramer proposes that constitutional disputes are resolved by the people through elections.[16]

Another work that challenges the judiciary's supreme power in current constitutional culture is Christian Fritz's *American Sovereigns*. Fritz concludes that after the Revolution many Americans envisioned a role for the people as the sovereign that involved the inherent right to actively monitor and criticize their government.[17] The incorporation of the right to assemble and

[15] Letters from James Madison to Mr. (1834), in 4 letters and other writings of James Madison, 349, 350 (185) in: Norman R. Williams, "The People's Constitution," *Stanford Law Review* 57, no. 1 (2004), 277.
[16] Kramer, *The People Themselves,* 106-111; 135-138; 184-188; 247. Hulsebosch, "Bringing the People Back In," 657-666.
[17] In this way, Fritz rejects the view popular sovereignty was solely applied as a rhetoric instrument by the Federalists to ensure ratification of the Constitution. See, Christian G. Fritz, *American Sovereigns: The People and America's Constitutional Tradition before the Civil War* (New York: Cambridge University Press, 2008), 3.

petition the government for a redress of grievances into the Constitution reflected this understanding of the role of the people. As Fritz points out, "when the people petitioned government or assembled to express their views they were simply engaged in a political role anticipated for the people in governments framed by the constitutional authority of the collective sovereign."[18] For Fritz, the Republicans of the 1790s and especially Madison embodied this vision. Madison expressed this view of the role and authority of the collective sovereign clearly in his Report of 1800, in which he defended the Virginia resolutions of 1798. In this text Madison elaborated on the concept of the right interposition that could be exercised by the people to express their views on the constitutionality of the actions of the federal government. Whereas nowadays interposition is often equated with nullification, Fritz points out that for Madison interposition was not an attempt to nullify federal legislation, but rather to intervene and alarm the people when the government did not act in accordance with the Constitution. A successful interposition occurred when the government reversed policy by conceding its actions exceed its constitutional powers, or when the people themselves reversed the constitutional order. Fritz argues that historians have misunderstood the Kentucky and Virginia resolutions as a failed experiment in nullification. Instead, Fritz points out Madison and Jefferson successfully used interposition by focusing "attention on the Alien and Sedition Acts, as interposition was designed to do." He concludes, "consistent with the theory of interposition, in 1800 American voters went to the polls and chose between candidates who took opposing positions on those acts."[19]

Fritz admits that some Americans disputed the legitimacy of these kind of expressions of popular will. Although there was broad consensus American government was founded upon

[18] Ibid., 7.
[19] Ibid., 4-8; 175-189; 192-194; 197-205.

popular sovereignty, Federalists for instance disagreed the people could actively exercise their sovereign will. Rather, Fritz suggests Federalists believed "once the people created a government, it became the conduit and the enforcer of that sovereign's will."[20] Accordingly, the people could only act through formal procedures sanctioned by the government. In this way, the Federalists replaced the people by the government as the sovereign. If the people wanted to express discontent with government actions, they could act by replacing their representatives through the electoral process. Therefore, this view assigned the people a passive role by limiting their role to participation in elections. Fritz demonstrates that between the Revolution and Civil War, these distinct positions over the legitimacy of the exercises of popular sovereignty repeatedly clashed and provided the tension within the constitutional order. Yet in the end, Fritz follows the line of Kramer's work by arguing the citizen increasingly withdrew in the private sphere after the Civil War due to the increase of judicial authority and the establishment of universal suffrage. In this way, collective sovereignty became a lost constitutional tradition in the post-war era.[21]

Legitimacy and counter-democracy

The Philadelphia petition raises the question how to evaluate the legitimacy of the petitioners who claimed to speak for the people in their assessment of the constitutionality of the Alien and Sedition Acts but did so without electoral authorization. Pierre Rosanvallon's *Counter-Democracy* provides a conceptual framework to evaluate the legitimacy of such practices outside the realm of the ballot box. In this work, Rosanvallon observes traditional forms of representation – elections and bureaucracy – have declined in significance. Rosanvallon points out that historians

[20] Ibid., 4.
[21] Ibid., 4; 175-180; 197-205; 277-283.

have been preoccupied with the gap between legitimacy and trust in electoral-representative government. He proposes instead to explore the "manifestations of mistrust as elements of a political system."[22] For example, whereas Kramer and Fritz suggest the triumph of judicial review and universal suffrage have contributed to a decline of the active citizenry, Rosanvallon suggests new practices of distrust have emerged that enable citizens to exercise control over the political process, and thus increase civic engagement and participation. Rosanvallon terms these indirect expressions of democracy "counter-powers", that together form "counter-democracy" to complement the electoral-representative democracy. He identifies three counter-powers: the powers of oversight, sanction and prevention, and judgement. The first counter-power, oversight, involves three primary control mechanisms through which citizens and organizations can monitor and evaluate the actions of their representatives: vigilance, denunciation, and evaluation. Vigilance refers to the ways in which citizens concerned with the public good can monitor and scrutinize the actions of their government. The local meetings and petitions against the Alien and Sedition Acts can therefore be considered as expressions of civic vigilance. Denunciation refers to the publication of information on the conduct of the government, for instance through the partisan press. The third mode, evaluation, refers to the broader availability of information and methods of investigation. According to Rosanvallon, the proliferation of these modalities of oversight increase the awareness of citizens and maintained pressure on their representatives to serve the public good.[23]

The second power, sanction and prevention, refers to the ability of citizens to mobilize opposition against specific governmental actions. However, Rosanvallon complains that because

[22] Pierre Rosanvallon, *Counter-Democracy: Politics in an Age of Distrust* (Massachusetts: Cambridge University Press, 2010), 5.
[23] Ibid., xi-xii; 2-8; 12-19; 33-56.

of fragmentation among those reactive groups, citizens are unable to contribute to positive solutions and instead assert "negative sovereignty" by vetoing government policies. As Rosanvallon observes, "blocking government action yielded tangible, visible results (…) increasingly, therefore, popular sovereignty manifests itself as a power to refuse." As such, he notes, "the power of the people is veto power."[24] From this perspective, the petition campaign that demanded the repeal of the Alien and Sedition Acts can also be understood as a preventive power. The third power, judgement, refers to "the people as judge" which is mainly expressed through the development of the "judicialization of politics." Sometimes this involves trials by jury, but Rosanvallon points out that in most cases "justice is rendered by judges 'in the name of the people', judges acting as representatives of the community." Therefore, contrary to the claims of Kramer and Fritz, Rosanvallon argues the increase of the prominent role of the judiciary does not necessarily lead to weakened democracy and a passive citizenry. According to him, "Even when judgement is 'delegated' to the courts, it retains a societal dimension."[25] In his conclusion, Rosanvallon argues that these counter-powers through which the people operate as watchdogs, veto-wielders, or judges have expanded the legitimacy outside the realm of elections. This conclusion nevertheless also contains a warning about the dark side of counter-democracy. If these counter-powers are exercised on a massive scale, Rosanvallon points out, there is "the risk that counter-democracy will degenerate into a destructive and reductive form of populism."[26] As such, counter-democracy can both reinforce and contradict democracy.

[24] Ibid., 14-15.
[25] Ibid., 191.
[26] Ibid., 299.

Research outline

This research aims to explore the impact of the opposition against the Alien and Sedition Acts on the legal status of immigrants in the United States. Specifically, this study attempts to answer the question how the opposition to the Alien and Sedition Acts of 1798 helped define the scope of aliens' rights in the United States. This thesis argues that the opposition significantly contributed to the constitutional foundations of the rights of aliens in the United States. First, this research will demonstrate that disenfranchised citizens and alien residents excluded from the political process through suffrage authorized their access to the public political domain through their involvement in petitioning against the Alien and Sedition Acts. Secondly, this study will show that although the petition movement did not produce a repeal of the Alien and Sedition Acts, the petitions contributed in the long term to a precedent that foreign residents were entitled to the same protections under the Constitution as citizens in criminal proceedings. By examining the petitions to Congress and the state legislatures in the years 1798 and 1799, this thesis shifts the attention away from the role of political elites in the formal protests of the legislation through the Kentucky and Virginia resolutions. Instead, the study of petitions provides a new perspective to existing scholarship on the Alien and Sedition Acts that includes the political voices of ordinary citizens, and more importantly, immigrants.

For the purpose of this research, the texts of at least forty petitions initiated between August 1798 and March 1799 are investigated. Together, these petitions against the Alien and Sedition Acts were signed by an estimated total of 22.000 people. A close reading aims to uncover the origins of the memorials, the shared objections of the petitioners against the legislation, and their view on the scope of aliens' rights. These petitions were mainly drawn from pro-Republican newspapers such as the *Kentucky Gazette* (Ky.), *The Herald of Liberty* (Pa.), *Universal Gazette*

(Pa.), *Centinel of Freedom* (N.J.), *Alexandria Advertiser* (Va.), *The Time Piece* (N.Y.), the *Independent Chronicle* (Ma.), and several others. To investigate the impact of the petitions, the research relies on the debates in the House of Representatives during the third session of the 5th Congress, between December 3, 1798 and March 3, 1799. Furthermore, several Supreme Court judgements of the Marshall Court and Fuller Court are researched to establish the long-term impact of the petitions on the rights of immigrants. Finally, this study also draws upon other sources, such as newspaper editorials, pamphlets, correspondence, and the records of congressional debates to complement the analysis of the petitions.

Some methodological issues should be addressed. First, this research primarily focuses on the legal rights of aliens. As such, this research will not explore the transformation of the meaning of citizenship during the early Republic or examines the political rights of aliens in the United States. For the purpose of this research, it should nevertheless be taken into consideration that some alien residents possessed the right vote and were therefore not excluded from the political process through elections. This was often related to the differences in state legislation on immigrants' rights. Alien suffrage, however, was the exception rather than the dominant practice.[27] As such, this research considers that most aliens were excluded from the political process through suffrage. Furthermore, this research takes in account that the petitions were only one part of the opposition movement against the Alien and Sedition Acts. Next to the local protests through petitioning, three other levels of resistance are identified: 1) Opposition of Republican representatives in Congress, 2) the Kentucky and Virginia Resolutions, 3) Protests of the Republican press.[28] As this research will show, the four different levels of opposition sometimes

[27] Neuman, Gerald L. Neuman, *Strangers to the Constitution: Immigrants, Borders, and Fundamental Law* (Princeton: Princeton University Press, 1996), 63-64.
[28] See for the congressional debates on the Alien Friends Law in June 1798, *Annals of Congress*, House of Representatives, 5th Cong., 2nd sess., 1985-2027.

merged and reinforced each other: in the first chapter, for example, the importance of the Republican press to facilitate the broadening of the scope of the petitioners' communication. Furthermore, it should be noted that during the 1790s, party affiliations were still very fluid. Freeman, for example, describes the Federalist and Republican factions as "two opposing political alliances" rather than political parties.[29] Some politicians who affiliated themselves with the Federalists, therefore, did not always vote along with the majority of their faction. A few moderate Federalists for instance emphasized their skepticism to the Alien and Sedition Laws. Moreover, some Federalists voted against the passage of the Alien and Sedition Acts in Congress or opposed the committee report supporting the laws in February 1799, such as Abraham Baldwin (Ga.) and Josiah Parker (Va.). As such, the fluidity of the political blocs should be taken in account upon encountering the use of the terms "Federalists" and "Republicans" in this thesis.

The first chapter focuses on the practice of petitioning in the colonial era and post-revolutionary America. It is demonstrated that the diverse reactive coalition employed petitioning as an instrument of political power. This part further examines how the citizens and immigrants protesting the Alien and Sedition Acts attempted to maximize the impact of the petitions. In the second chapter the content of the petitions is analyzed to show how the petitioners justified their resistance to the legislation. Furthermore, the arguments of the petitioners are investigated to demonstrate citizens and foreigners articulated the view aliens were parties to the Constitution, and thus, asserted that aliens could claim certain constitutional rights. The third and final chapter examines the impact of the petitions in both the short term and long term. It is argued that although the petitions failed to produce a congressional repeal of the legislation, the debates in Congress on the petitions established the groundwork for future thought on the rights of aliens.

[29] Freeman, "Explaining the Unexplainable: The Cultural Context of the Sedition Act," 22.

Chapter 1. The Practice of Petitioning

The ink was not dry on the Alien and Sedition Laws before the first protests of the Federalist measures emerged in parts of Kentucky in the summer of 1798. In the first weeks of July, the *Kentucky Gazette* from Lexington called for meetings in Fayette and adjacent counties "for the purpose of taking into consideration the present critical situation of public affairs."[30] On July 24, several inhabitants of Clarke County (Ky.) responded to this call and assembled at their courthouse to draft a petition in protest of federal policies adopted during the last session of Congress. In the body of the petition the people of Clarke County declared the Alien Friends Act was "unconstitutional, impolitic, and disgraceful to the American character." Furthermore, they referred to the Sedition Act as "the most abominable that was ever attempted to be imposed upon a nation of free men."[31] In the final resolution, the petitioners requested their county representative to present the text to Congress and President John Adams and to ensure the publication of the petition in the *Kentucky Gazette*.[32]

The right to petition, along with the right to assemble, was already a well-established method in post-revolutionary America for individuals to seek redress of grievances from the governing authority. During the Alien and Sedition Acts controversy, the protesters used petitioning as a method through which they could exercise political power apart from the ballot box. Furthermore, the protesters did not only address their petitions to the federal government, but also to the American public with the use of print media. Through the circulation of petitions in the Republican press petitioners were able to distribute their ideas to a broader audience. Although the petitions against the Alien and Sedition Acts were not products of a coordinated nation-wide

[30] "NOTICE: To the Inhabitants of Fayette, and the adjacent Counties," *Kentucky Gazette*, July 18, 1798, 3.
[31] Jacob Fishback and R. Higgins, "Resolutions of the Citizens of Clarke County," *Kentucky Gazette*, August 1, 1798, 3.
[32] Ibid.

petition campaign, perceptions of broad participation in petitioning led the federal government to treat the petitions as such. Therefore, it is argued in this chapter that the opposition against the Alien and Sedition laws effectively employed petitions as devices of both political and public persuasion. This chapter begins with a discussion of the use of petitioning in colonial times and post-revolutionary America to demonstrate why the opposition to the Alien and Sedition Acts resorted to the practice of petitioning as instruments of resistance. Subsequently, petition texts, newspaper editorials and records of county meetings are analyzed to show how petitioners attempted to increase their public influence. The final part of this chapter discusses to what extent the petitioners were successful in broadening the scope of their influence by examining Federalist reactions.

Portals to political power

For the protesters against the Alien and Sedition Laws there were several advantages to the use of petitioning as a form of resistance. Although the opposition employed other instruments, it is very likely protesters relied on petitioning because it already was a well-established method to engage with their government. By the late eighteenth century, the practice of petitioning was deeply embedded in American political culture, with roots dating back to the Magna Carta. In colonial times, petitions were mainly used as a device to voice individual grievances to local assemblies. As such, representatives were informed of popular sentiments and the needs of their constituents. Usually, the petitions led to the altering of legislation, making petitions instruments through which the people could influence their assemblies. Stephen Higginson has demonstrated that petitioning was an effective method for the people to gain access to their representatives, since the right to petition contained an implicit obligation of the government to address the grievances

of their constituents.[33] After the Revolution, the practice of petitioning remained important. The absence of much debate on the petition clause during the ratification process of the Bill of Rights indicates the Founders also understood petitioning as an inherent right. Some members even advocated the addition of right of the people to "instruct their representatives" to the petition clause.[34] According to Akhil Reed Amar, this proposal was eventually dismissed because the Federalists feared it would make officials susceptible to popular sentiments.[35] Nevertheless, Higginson has pointed out that during the debates the drafters of the Bill of Rights reaffirmed that the right to petition contained an implied duty of officials to consider the grievances articulated in petitions. As a result, Congress established special committees responsible for the consideration of petitions. This tradition would be upheld until 1836, when Congress adopted the gag rule to contain the nation-wide petition campaign against slavery.[36]

Furthermore, disenfranchised citizens and alien residents excluded from the political process through suffrage used petitioning to authorize their access to the public political domain and express their views on the Alien and Sedition Acts. In post-revolutionary America, it was not uncommon for the disenfranchised to petition their government for a redress of grievances. Governing authorities did not discriminate and considered petitions of both citizens and non-citizens. As such, petitioning provided marginalized groups such as Native Americans, women, foreigners, and slaves with a mechanism through which they could exercise political power.[37] In line with Rosanvallon's claim in *Counter-Democracy*, the practice of petitioning can therefore be

[33] Stephen A. Higginson, "A Short History of the Right to Petition Government for the Redress of Grievances," *The Yale Law Journal*, no. 1 (1986): 143-147.
[34] Ibid., 155-156.
[35] Akhil Reed Amar, *The Bill of Rights* (New Haven: Yale University Press, 1998), 31-32.
[36] Higginson, "A Short History of the Right to Petition Government for the Redress of Grievances," 165-166; Ronald J. Krotoszynski, *Reclaiming the Petition Clause: Seditious Libel, "Offensive" Protest, and the Right to Petition the Government for a Redress of Grievances* (New Haven: Yale University Press, 2012), 5-11; 104-113; Kramer, *The People Themselves*, 25.
[37] Krotoszynski, *Reclaiming the Petition Clause*, 6-8.

considered a "counter-democratic power" that was practiced alongside and beyond the ballot box. In the case of the petitions against the Alien and Sedition Acts, various memorials indicate the participation of non-qualified voters in the formation of the petitions. The petitioners can be identified as a group from the opening of numerous petitions, in which their political status was explicitly mentioned. Furthermore, they can be identified individually from the signatures that were included to the petitions. Unfortunately, most newspapers did not include the names of the individuals when they reprinted the petition. Nevertheless, the political status of the petitioners as different local groups can still be determined. The petition from Essex County (N-J.), for example, was addressed in the name of both "the Inhabitants and Freeholders" of the county.[38] In a petition from the 7th regiment of Madison County (Va.), militiamen claimed the acts "are infringements of the Constitution, and of natural rights, and (…) we cannot approve or submit to them."[39]

Concerned by the possibility of evictions under the Alien Friends Act, aliens also employed petitions to protest the Alien and Sedition Laws. Therefore, contrary to the dominant narratives on the resistance to the Alien and Sedition Acts, aliens were not passive actors whose fate resided in the hands of political elites during the controversy. Instead, aliens actively opposed the Alien and Sedition Laws through the mechanism of petitioning. As noted in the introduction, the Irish natives from Philadelphia both drafted and signed a petition to Congress urging a repeal of the legislation. In Virginia an alien named James Ogilvie delivered a speech before a protest meeting in Essex County (Va.) in support of a petition denouncing the Acts. He argued aliens as well as citizens owed a moral duty to participate in the public debate on the Alien and Sedition Laws. He declared. "as a citizen I have a right to address you, and (…) as a stranger and an Alien, surely this would

[38] "Inhabitants and Freeholders of the County of Essex, State of New Jersey," *New-Jersey Journal*, September 18, 1798, 3.
[39] William Irvine, "Resolutions of the Seventh Regiment and Citizens of Madison County," *Kentucky Gazette*, September 12, 1798, 2.

not in the eye of impartial reason impair my duty or abrogate my right to communicate to any individual (…) any useful information I may possess."[40] Moreover, Irish immigrants from New York also drafted and sent a petition to Congress to protest the legislation. As such, during the controversy against the Alien and Sedition Acts, disenfranchised citizens and alien residents used petitioning as an instrument to create a portal to political power.[41]

The opposition to the Alien and Sedition Acts also relied on petitioning because it was considered one of the only methods to protest the legislation without the risk of being prosecuted. When speech and writings were restricted under the Sedition Act in 1798, protesters could still rely on the constitutional right to assemble and petition to criticize the measures of the federal government. A publication signed by 'Philo-Agis' reiterated the dependence of protesters on petitions. As "peaceable (…) constitutional measures," the author argued "petitions, remonstrances and addresses are the only plans within our grasp." Philo-Agis was convinced a dual strategy of local petitioning and reactions from legislatures from Kentucky's southern "sister states" would be successful to obtain a repeal of the Alien and Sedition Laws. The author was convinced the President and Congress were unable to ignore the arguments of the opposition if "the unanimous voice of a very considerable part of this continent be concentrated in a single point," especially since the author considered petitioning a more moderate form of resistance, perfectly between "the extremes of faction and discord on the one hand, and those of a servile and

[40] James Ogilvie, Meriwether Jones, and John Dixon, *A speech delivered in Essex County in support of a memorial, presented to the citizens of that county and now laid before the Assembly, on the subject of the Alien and Sedition acts by James Ogilvie*, (Richmond: 1798), 3.
[41] *The Plea of Erin, or The case of the natives of Ireland in the United States, fairly displayed, in the fraternal address of the First Congress in the year 1775 ; and in the respectful memorial of the republican Irish, who had, consequently, sought "an asylum" in America, addressed by them to the Congress in the year 1798*, (Philadelphia: Office of the Freeman's journal, 1798); Duane, *A Report of the Extraordinary Transactions.*

sordid submission to tyranny and despotism on the other."[42] Like many other essayists and editors who protested the Acts, Philo-Agis adopted a pen name to remain anonymous. Many petitions, by contrast, included a list of handwritten names with signatures. The signing of their identities suggests petitioners were less concerned about prosecution because their actions were still covered and protected by the Constitution. Ultimately, petitioning was a well-established, inclusive, and legitimate method for the opposition to protest the Alien and Sedition Acts.[43]

Broadening the scope of communication

Though Philo-Agis promoted a strategy of a nation-wide petition campaign to affect a repeal of the laws, the petitions that emerged during 1798 and 1799 were not the product of a nationally organized effort. As Bradburn has shown, the opposition against the Alien and Sedition Acts was not a coherent collective movement. Rather, he characterizes the resistance that emerged from local communities across the country as "the mobilization of many different types of publics." According to Bradburn, "some petitions were more the product of grassroots organization," while "others resulted from mature party politicking created by election campaigns and were written by party activists."[44] A good example is the difference in the formation of petitions between Kentucky and Virginia, the first states to clamor against the Alien and Sedition Acts. Assemblies in Kentucky were to a greater extent "spontaneous affairs" and could draw thousands of attendees. Sometimes these meetings attracted outsiders and residents of other counties. According to the *Alexandria Advertiser,* between four and five thousand people joined a

[42] Philo-Agis, "O Tempora! O Mores! O Liberty – a found once delightful to every American ear," *Kentucky Gazette*, August 22, 1798, 1.
[43] Ibid., 1-2.
[44] Bradburn, *The Citizenship Revolution*, 185.

protest meeting in Lexington, more than the population of the town.[45] Petition drives in Virginia, on the other hand, were mainly organized and planned by local Republican elites in this state. As a result, these protest meetings attracted a maximum of several hundreds.[46]

Though the petitions against the Alien and Sedition Acts were not products of a coordinated nation-wide effort, many protesters exploited petitions to broaden the scope of their influence. From the requests to distribute copies to other localities and Republican newspapers it can be deduced the petitioners targeted a larger public than the federal government. In Chester County (Pa.) a special committee of eleven citizens was appointed "to write their acquaintances in other districts, to inform them of this meeting."[47] Woodbridge township (N-J.) also forwarded the petition to a neighboring county and requested the dispatch of copies to the most influential Republican newspapers in the state, *the Centinel of Freedom* and *New-Jersey Journal*.[48] With the use of the print media and their personal networks, petitioners attempted to encourage the people of other areas to rally against the Acts. Petitioners from Amelia County (Va.) expressed the hope "a majority of the citizens of other states, through remonstrance and petition, will induce their representatives to change their system."[49] In a reply from Timothy Pickering to Prince Edward County (Va.), the Secretary of State refused to pass on their petition to President Adams as he saw the publication of the petition in the press as evidence of the petitioners' ulterior motive "to procure partisans to their unfounded opinions among the people."[50] Advertisements were placed in several Republican newspapers, calling on the people to assemble and petition. In the *Centinel of Freedom,*

[45] Robert Johnson, "The Resolutions of the Citizens of Fayette and Counties Adjacent," *Kentucky Gazette,* August 15, 1798, 2.
[46] Bradburn, *The Citizenship Revolution,* 173-175.
[47] "Spirit of the Times," *The Independent Chronicle and Universal Advertiser,* January 24, 1799, 1.
[48]"Resolutions Inhabitants of the township of Woodbridge, New Jersey," *New-Jersey Journal*, February 12, 1799, 2.
[49] "Fire of the Flint," *The Independent Chronicle and Universal Advertiser,* October 8, 1798, 1.
[50] Timothy Pickering, "From Timothy Pickering to P. Johnston, Esquire, of Prince Edward County, Virginia," *Gazette of the United States & Philadelphia Daily Advertiser,* October 9, 1798, 1.

"A Democrat" urged citizens of New-Jersey to "remonstrate against these oppressive, unjust, and arbitrary laws, and by that means strengthen the hands of your republican representatives, who mean to make an effort to have them repealed."[51]

Bradburn has already emphasized the crucial role of the network of Republican newspapers in the spread of the popular agitation from Kentucky and Virginia to Pennsylvania, New York, New Jersey, and Vermont. However, he has found no indications of organized petitioning in other states.[52] However, this does not imply no attempts were made to organize petition meetings or petitions were not available for people to read in these other states. On January 31, 1799, the *Maryland Herald* published a notice addressed by "Gracchus Americanus" to the inhabitants of Hagerstown calling for a meeting "to express their opinions of the Alien and Sedition Acts."[53] Furthermore, the petition from Clarke County (Ky.) was printed upon request in the *Kentucky Gazette*, and subsequently, circulated in other Republican newspapers in Massachusetts and Maryland between September and October 1798. Moreover, the Clarke County petition and the petition from Fayette County were printed in one of the leading Federalists papers, John Fenno's *Universal Gazette*.[54] The reprint of petitions in *The Independent Chronicle* (Ma.), *The Bee* (CT.), and the *Maryland Herald* (MD.) also indicate petitioners were able to broadcast their message to areas where the control of the Republicans was minimal. Thus, the appearances of petitions in newspapers in states beyond Kentucky, Virginia, Pennsylvania, New York, New Jersey, and

[51] A Democrat, "The Democrat – No. III," *The Centinel of Freedom*, December 2, 1799, 1.
[52] Bradburn, *The Citizenship Revolution*, 178-179; 183-184. Bradburn states the petitioning failed to gain grounds in most of the New England states, because the power of the Republican power was limited, and no Republican newspaper was established in these states.
[53] Gracchus Americanus, "To the People of Washington County," *Maryland Herald and Hager's Town Weekly Advertiser*, January 31, 1799, 2.
[54] Fishback and Higgins, "Resolutions of Clarke County," *3.* For reprints, see *The Independent Chronicle*, September 10, 1798; *Federal Gazette & Baltimore Daily Advertiser*, October 23, 1798; and *Universal Gazette*, September 13, 1798.

Vermont indicates the petitioners were successful in broadening the scope of their communication.[55]

The perception of a reactive coalition

The circulation of petitions in the print media encouraged the debate on the Alien and Sedition Acts among a larger public. For weeks, the pro-Federalist and pro-Republican press were preoccupied with the protests to the legislation that had arisen in several states. As a result, the print media had created a perception of a unified opposition movement against the Alien and Sedition Acts. In the pro-Federalist *Commercial Advertiser*, "A Queen's County Elector" contradicted that as many as 1500 petitioners were present at a protest meeting in Flushing, New York. "It was not a general meeting," the author declared, "but (was) only attended by a few Jacobins."[56] The *Gazette of the United States* printed a grand-jury charge by Alexander Addison, who argued the arguments of the petitioners were unfounded.[57] In the *Centinel of Freedom*, "A Friend to Liberty Poles" praised the erection of a liberty pole in Bergen County (NJ.) with the inscription "We will defend our rights."[58] Meanwhile, songs were dedicated to the "opposition of the acts" and pamphlets reacting on the clamor against the legislation were distributed.[59] The media had transformed the diverse petitions and other forms of protest into a coherent protest movement. Rosanvallon remarks there is a simple explanation for the unification of reactive movements. As

[55] For other reprints of petitions see for instance, *The Independent Chronicle*; September 10, 1798; September 25, 1798 and October 11, 1798; *The Bee*; December 26, 1798 and November 21, 1798; and *Maryland Herald*; September 13, 1798.

[56] A Queen's County Elector, "Communication," *Commercial Advertiser*, March 22, 1799, 2.
[57] Alexander Addison, "A Charge to the Grand Juries of the County Courts of the Fifth Circuit of the State of Pennsylvania, at December Sessions, 1798: by Alexander Addison," *Gazette of the United States & Philadelphia Daily Advertiser*, February 16, 1799, 2.
[58] A Friend to Liberty Poles, "More, More Sedition Poles!," *The Centinel of Freedom*, March 12, 1799, 2.
[59] Ibid.

he observes, "reactive coalitions turn out to be easier to organize than other kinds of coalitions because their heterogeneous membership can be ignored." In addition, he claims "all rejections are identical, regardless of what may have motivated them."[60] As such, the rejection of the Federalists' policies by different publics could easily be amalgamated into a comprehensive story by the press, and thus created a perception of a unified reactive movement.

In consequence, the federal government regarded the petitioners as one reactive coalition. In December 1798, the diverse protest meetings against the Alien and Sedition Acts gathered the attention of the federal government. The Federalists complained that "the ferment which had been raised" in certain parts of the country were "symptoms of an armed opposition to the laws."[61] Upon arrival of the petitions in Congress, several High-Federalists attempted to obstruct the references of the petitions to the "Committee of the Whole" for consideration. They argued the petitions contained libelous language and were organized by Republicans to "put in activity every restless and discontented spirit in the country…to create a clamor against public measures."[62] These Federalists also argued the reference to this committee would be unnecessary, since the House had already voted on the constitutionality of the Alien and Sedition Acts. In turn, Republicans replied the petitions provided proof of the public's discontent with the laws in question. Furthermore, they pointed out the people's right to petition the government was guaranteed by the Constitution. Albert Gallatin referred to the implicit obligation of the House to refer petitions to a committee for consideration. According to him, "public opinion ought to be attended to…we ought to pay respect to them as symptoms of real objections against these laws, and if the laws are not found to be essential, they ought to be repealed."[63] Ultimately, Congress did not dismiss the petitions on the

[60] Rosanvallon, *Counter-Democracy: Politics in an Age of Distrust*, 15-16; 178-80.
[61] *Annals of Congress*, House of Representatives, 5th Cong., 3rd sess., 2425; 2436.
[62] Ibid., 2895.
[63] Ibid., 2891.

suggestion of the High-Federalists. The House decided to appoint a select committee to consider the various petitions and conclude from the "mass of matter a statement of the arguments which they contain."[64] In the assumption the petitions spoke with "one voice", the House treated the different petitions against the Alien and Sedition Laws as one unit, including those petitions drafted and signed by disenfranchised citizens and immigrants.[65]

After the passage of the Sedition Act, protesting the federal government became a dangerous affair. Nevertheless, petitioning provided the opposition to the Alien and Sedition Acts with a legitimate mechanism through which they could engage with the government. Furthermore, petitioning enabled disenfranchised citizens and alien residents who were excluded from the political process through suffrage to authorize their access to the political domain. Though the movement missed coherence in organization at a national level, the protesters maximized the impact of the petitions with the use of the print media. The attention generated on the protests in both pro-Republican and pro-Federalist newspapers created a perception of a coordinated opposition movement against the Alien and Sedition Laws. Therefore, petitioners not only conveyed their message to a larger public, but also increased the impact of their message. As a result, Congress responded to the collective arguments made in the petitions, even those petitions from disenfranchised citizens and alien residents. It can therefore be concluded the protesters effectively employed the petitions as devices of both political and public persuasion.

[64] Ibid., 2987.
[65] Ibid., 2886.

Chapter 2. Parties to the Constitution

On October 9, 1798, *The Gazette of the United States* published a letter from Secretary of State Timothy Pickering to the petitioners of Prince Edward County (Va.). A month earlier, Pickering had received a petition from this county that protested the Alien and Sedition Acts. Convinced the petitioners desired "to excite the disobedience of the laws, hatred to the government, insurrection, and revolt", the Secretary decided to distribute his reply with the use of the press. In his address, Pickering wondered what the clamor against the Alien Friends Act was about. After all, he pointed out, "the object of this act are strangers merely, persons not adopted and naturalized." Indeed, in numerous petitions against the Alien and Sedition Acts protesters expressed alarm over the Alien Friends Act. Specifically, the petitioners asserted the act violated the personal rights of aliens guaranteed by the Constitution. Although Pickering maintained in his letter that "the Constitution was established for the protection and security of American citizens, and not intriguing foreigners", the petitioners articulated the shared view aliens were entitled to constitutional protection.[66]

Several historical accounts on the opposition to the Alien and Sedition Acts have pointed out the arguments of the protesters displayed ideas about states' rights and the boundaries of dissent. However, the reaction of Timothy Pickering indicates the arguments of the protesters against the Alien Friends Act also articulated the view aliens were parties to the Constitution, and, thus, that aliens could claim constitutional rights. Therefore, this chapter aims to demonstrate that in response to the Alien and Sedition Acts, the petitioners promoted the notion alien residents were entitled to constitutional protections. In the first part it is argued the petitioners specifically objected to the Alien Friends Act because they claimed the law expanded the power of the Federalists-dominated national government, at the expense of the personal rights of aliens and the

[66] Pickering, "From Timothy Pickering to P. Johnston, Esquire," 1.

rights of the states. Subsequently, the second part demonstrates that in justification of their criticism of the acts, the petitioners put forth a broad vision of what constitutes as legitimate dissent. In the closing section the juridical arguments against the Alien Friends Act are analyzed to show how petitioners claimed the Constitution protected the civil rights of aliens.

"Inhumane" and "dangerous": Shared objections to the Alien Friends Act

The Alien Friends Act authorized the President to deport any foreigner "he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect of (…) any treasonable or secret machinations against the governments."[67] Furthermore, the law empowered the executive branch to determine the conditions for the departure of the suspected alien. Federalists in Congress justified the act by claiming it was necessary to defend the country against dangerous aliens, specifically French agents. "Times are full of danger", Harrison Gray Otis said, "and it would be the height of madness not to take every precaution in our power."[68] After the passage of the laws, pro-Federalists newspapers quickly started calling for the enforcement of the Alien Friends Act against "factious aliens." As a consequence, many petitioners asserted the Federalists aimed to expel numerous peaceable aliens from the United States. Inhabitants from Powhatan County (Va.) pointed out the Alien Friends Act "cause(s) alarm to those disclaiming all foreign influence or protection."[69] In the petition from the "natives of Ireland", aliens expressed concerns of deportation under the Alien Friends Act. "We tremble with fear", they said, for "banishment without trial, may be inflicted on those of us, who shall have excited personal resentments, though really unattended with public danger."[70]

[67] *Statutes at Large,* I, 570-572.
[68] *Annals of Congress,* 1989.
[69] "Spirit of the Times," *Greenleaf's New York Journal,* November 7, 1798, 2.
[70] *The Plea of Erin,* 3; 5.

The petitioners considered the deportation of peaceable aliens on mere grounds of suspicion unnecessary and immoral. In several petitions, protesters rejected the charge the Alien Friends Act was indispensable to the safety of the country. Petitioners from Dinwiddie County (Va.) called the law "unnecessary repugnant to humanity" and pointed out the Federalists "could mention neither persons nor facts to justify it."[71] The inhabitants of Montgomery County (Ky.) also denied dangerous alien residents posed a risk to American security. "It insinuates mistrust or doubt of integrity in the citizens of the United States," the protesters argued.[72] Furthermore, petitioners regarded the Alien Friends Act as immoral, because aliens could be expelled without any accusation of their crime or possibility to defend themselves. Therefore, in various petitions the deportation of resident aliens is called "cruel", "inhumane", or "unjust." The people of Bourbon County (Ky.) considered the "Alien law (…) degrading to the American character as a nation of equal liberty and asylum to stranger." Moreover, petitioners charged deportation was an inhumane punishment for aliens who had established themselves in the country for several years. They thought it would be especially cruel to banish asylum seekers "from their families and property to the despotism from which they escaped."[73]

Furthermore, protesters complained that the federal assumption of control over aliens interfered with the jurisdiction of the states over immigrants. Since the Constitution delegated the power to regulate the migration of persons to the individual states, the states essentially determined the rules of entry of many aliens until the passage of the Alien Laws. As the petition from Cumberland (Pa.) indicates, most states employed open entry policies toward aliens, mostly for

[71] Buller Claiborne and George Pegram, "Spirit of the Times," *The Centinel of Freedom*, January 15, 1799, 1.
[72] "Resolutions of the Inhabitants of Montgomery county, Kentucky," *Kentucky Gazette*, August 15, 1798, 2-3.
[73] "Resolutions of the Citizens of Bourbon County," *Universal Gazette*, October 4, 1798, 2. It is important to note that the petitioners clearly distinguished between alien friends and alien enemies. The petitioners did not oppose the Alien Enemies Act, which contained the same features as the Alien Friends Act but applied only in case of war with another country.

the wealth these immigrants brought with them and to encourage population growth. The petitioners claimed that the "principal cause which must have inclined, wealthy and industrious emigrants to come, was the early manner prescribed by our laws, for their becoming citizens." However, the petitioners charged the Alien Friends Act obstructed the power of states to admit aliens by "curbing the freedom of emigration to the different states." Moreover, they claimed the Alien Laws discouraged the immigration of desirous aliens to the states. As the petitioners from Cumberland pointed out, "the present difficulties foreigners must lay under this country are so great, that there is no reason to expect, that any that will make respectable citizens will come."[74] Therefore, the inhabitants from Queen's County (Ny.) concluded, the law not only "usurp[ed] powers reserved to the states", but also "prevent[ed] emigration which has been a source of wealth and population to this country."[75]

The petitioners also charged that the Alien Friends Act, along with the Sedition Act, dangerously expanded the power of the federal government. The inhabitants of Orange County (Va.) articulated the fear the Federalists would eventually adopt a law of similar character against citizens. As the petition observed, "the precedent may be considered as ready to be extended to the case of citizens, whenever (they) become sufficiently obnoxious to those in power."[76] Some petitions even went so far as to accuse the Federalists of attempting to perpetuate their power by suppressing any form of opposition. As the petitioners from Prince Edward County (Va.) observed, "when we see the freedom of speech and opinion criminated (…), the trial by jury abolished, and the president invested with dangerous and unlimited power, we are seriously alarmed at the

[74] "The Petition and Remonstrance of the Subscribers, Inhabitants of the County of Cumberland, Pennsylvania," *The Farmers' Register*, December 26, 1798, 2.
[75] "The Memorial of the Subscribers, Inhabitants of Queen's County, in the state of New York," *Commercial Advertiser*, March 22, 1799, 2.
[76] "Address of the People of the County of Orange, State of Virginia," *Aurora General Advertiser*, December 1, 1798, 2.

probable consequences."[77] The people of Essex County (Va.) proclaimed that "if Congress have a right to violate the Constitution in one instance, they have a right to violate it in all." In consequence, the petitioners concluded, "they may establish a federal Church under the protest of the existence of Religious Fanaticism, they may render the Presidency inheritable, or deprive citizens as well as aliens of the trial by jury."[78] A Goochland County (Va.) petition reiterated the same concern as Orange County in their claim the Alien and Sedition Laws and other defense measures "pave the way for any future violations, when our rules from weak or interested views shall think it necessary." As a result, the petitioners pointed out, the Federalists endeavored to "introduce as tyrannical an aristocracy as any nation in Europe ever groaned under."[79] The petitioners explained the legislation of the Federalists had only one purpose: to expand their own power. Whether the policies addressed aliens, free speech, the standing army, the great naval armament, or diplomatic relations with France and Great Britain, the petitioners argued all these measures were part of a larger scheme of the Federalists. As the petitioners from Orange observed, "the ardor with which (…) the prospect of war has been seized to complete a system, has left nothing be misunderstood."[80] Furthermore, the petitioners from Clarke County (Ky.) concluded from these Federalist policies that "there is sufficient reason to believe, and we do believe, that our liberties are in danger."[81]

[77] P. Johnston, "Freeholders of Prince Edward County, in the state of Virginia," *Alexandria Advertiser,* November 21, 1798, 1.
[78] "To the General Assembly of the State of Virginia, the memorial of the people of Essex," *Aurora General Advertiser,* August 20, 1798, 2.
[79] "Resolutions of the Citizens of Goochland County," *Aurora General Advertiser,* September 3, 1798, 2.
[80] "Address of the People of the County of Orange," 2.
[81] Fishback and Higgins, "Resolutions of the Citizens of Clarke County," 3.

Popular constitutionalism and the right of interposition

To justify their criticism on the federal government for the enactment of the Alien and Sedition Acts and other defense measures, the petitioners invoked the sovereignty of "the people." Various petitioners reiterated the right of the people to assemble and petition their government. According to the petitioners, the proclaimed authority of "the people" allowed them to actively monitor the government the people themselves had established. As the inhabitants and freeholders of Essex County (N.J.) maintained, the right to assemble and petition lawmakers was "a natural and indisputable right secured (…) by the Constitution."[82] Petitioners from Clarke County argued "that every officer of the federal government (…) is the servant of the people and is amenable and accountable to them; that being so, it becomes the people to watch over their conduct with vigilance."[83] Moreover, the petitioners presented the view "the people" could question and criticize the measures of their government. The inhabitants of Spotsylvania County (Va.) established that "all political power is originally in the hands of the people" and therefore called it their "indispensable duty and right, freely to investigate the measures of our government, and publicly to pronounce our opinion."[84] Furthermore, a petition from Hanover County (Va.) put forth the idea the people could "remonstrate against, or petition the government for a repeal of any act which they may conceive to be unconstitutional or oppressive."[85] The petitioners suggested they could interpret the Constitution and establish when federal laws violated the document. Consequently, the petitioners declared the Alien Friends Act and Sedition Act unconstitutional. As such, the petitioners embraced Larry Kramer's notion of "popular constitutionalism," which

[82] "Inhabitants and Freeholders of the County of Essex," 3.
[83] Fishback and Higgins, "Resolutions of the Citizens of Clarke County," 3.
[84] "By Request: Resolutions of the Inhabitants of the County of Spotsylvania," *The Times and Alexandria Advertiser*, November 13, 1798, 1.
[85] Edward Garland and William Pollard, "Resolutions of the People of the County of Hanover," *The Herald of Liberty*, November 19, 1798, 1-2.

refers to the active and ongoing control of the people over the interpretation and enforcement of their constitution. The exercise of popular constitutionalism by the petitioners further supports Fritz's argument in *American Sovereigns* that post-revolutionary Americans understood popular sovereignty as involving the right to monitor and criticize their government. Therefore, by invoking the sovereignty of the people, petitioners promoted a vision of legitimate dissent that included the right of the people to monitor and criticize the government, and furthermore, the ability of the people to express their views on the constitutionality of laws.

A minority of petitioners, however, claimed "the people" not only could express their views on the unconstitutionality of the laws of the government, but also could declare unconstitutional laws void. These petitions, mostly from Kentucky and Virginia, challenged the idea the Courts could exclusively decide upon the constitutionality of federal laws. The inhabitants of Essex County (Va.), argued that legislation that "encroach on the sovereignty of the people (…) are in their nature void", while petitioners from Bourbon County (Ky.) resolved that the right of the people to review public measures "is dictated by the law of nature" and "all laws made to impair or abridge it, are void."[86] In Hanover County (Va.), protesters suggested they could demand to "repeal any act which they may conceive to be unconstitutional or oppressive", since, "in a Democratic Representative Republic, all political power is derived from, and when abused, may be resumed by the people."[87] Douglas Bradburn has demonstrated the arguments in these petitions were echoed in the Kentucky and Virginia resolutions. Therefore, he concluded "the Virginia and Kentucky resolutions (…) broke very little new ground in resolving that the laws should be deemed unconstitutional, or 'null and void'."[88]

[86] Johnston, "Freeholders of Prince Edward County," 1; "Resolutions of the Citizens of Bourbon County," 2.
[87] Garland and Pollard, "Resolutions of the People of the County of Hanover," 1-2.
[88] Bradburn, *The Citizenship Revolution*, 194.

The one question that remains however, is why these protesters still petitioned their government for the repeal of the acts when they argued the Alien and Sedition Acts could be declared void and "of no force"? In *American Sovereigns,* Christian Fritz has argued the state legislatures of Kentucky and Virginia embraced Madison's concept of the right of interposition. He has pointed out the real object of the state resolutions was not to nullify the Alien Friends Act and Sedition Act, but to instigate "a coordinated national effort to repeal the laws through congressional action."[89] According to this understanding, a third party could use the right of interposition to alarm "the people", the sovereign, on whether the federal government acted according to the Constitution. The main purpose was not to nullify federal laws, but to seek a repeal of federal laws the "interposer" deemed unconstitutional. According to Fritz, the interposer could rely on a variety of tools – public opinion, petitions, protests, and instructions for representatives – to focus the attention of the people to unconstitutional laws.[90] Fritz has emphasized the act of interposition "did not affect the legitimacy of the challenged action of government, since the agent of interposition was not 'the people' as the sovereign," but rather a third party.[91] In accordance to this notion of interposition, the petitioners against the Alien and Sedition Laws did not nullify the legislation but urged the government to repeal the acts. The petitioners merely voiced their opinion of the legislation to focus the attention to the unconstitutionality of the Alien Friends Act and Sedition Act. From the petitioners' attempt of interposition, it can be suggested they exercised at least two of the powers of indirect democracy Rosanvallon has explored in *Counter-Democracy*. They exercised the power of oversight by drawing the attention of the people to the unconstitutionality of the Acts. Furthermore, they

[89] Fritz, *American Sovereigns*, 198.
[90] Ibid., 192-194; 197-210.
[91] Ibid., 194.

exercised veto power or the power of prevention in their attempt to produce a constitutional repeal of the laws. From this view, the petitioners put forth a broad vision of legitimate dissent, that included the right to monitor and criticize the government and consider the constitutionality of federal laws, without challenging the authority of the federal government.

As such, the petitioners declared the Alien Friends Act violated the Constitution in three ways. First, they argued the act was unconstitutional because the control over aliens originally belonged to the states. As noted above, the states had assumed control over immigrants before the passage of the Alien Laws. To argue this power was reserved to the states, not the federal government, petitioners appealed to Article 1, Section 9 of the Constitution. The clause prohibited Congress from the regulation of "the Migration or Importation of such Persons as any of the States now existing shall think proper to admit (…) prior to the year 1808."[92] Under the Alien Friends Act, the petitioners argued, the federal government prohibited the migration of aliens to the states by expelling them from the country. Therefore, the petitioners from Spotsylvania concluded, "the bill violates the constitution, because it virtually destroys the right of the states to admit the migration, which Congress shall not prohibit prior to the year 1808." Furthermore, petitioners appealed to the Tenth amendment, to point out Congress didn't possess any implied powers to deport alien residents.[93] The petition from Spotsylvania County (Va.) also maintained that "the Constitution (…) contains a limitation of power, to be exercised in the form and manner therein specified." They asserted that the federal government could not assume any power that was not

[92] U.S. Constitution, art. 1, sec. 9, cl. 1.
[93] Amendment X, Bill of Rights, reads "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

specifically enumerated in the Constitution. "Any assumption of authority that transcends this limitation", the petitioners pointed out, "is an invasion of the rights and sovereignty of the states."[94]

Secondly, the petitioners argued the Alien Friends Act violated the separation of powers by investing the executive branch with arbitrary powers. As a petition from Washington County (Pa.) explained, "it makes one man the legislator, the judge, the witness, and the jury – a blending of powers unknown to the Constitution."[95] Petitioners from Hanover County (Va.) argued that by investing "the President with legislative, judicial and executive powers," the Alien Friends Act created "a union which, in the hands of the one man, is the true definition of despotism."[96] The petitioners also pointed out the Constitution did not delegate any implied powers to the President to expel aliens he suspected to be dangerous out of the country. As the petition from Essex County (Va.) observed, "the President is vested with certain powers, such as that of being commander by the Sea and Land, of making Treaties, (…) but has no power of Transporting citizens upon suspicion."[97]

Third and lastly, the petitioners declared the Alien Friends Act unconstitutional because the law violated the constitutional rights of aliens to trial by jury and due process of law. The petitioners argued that by allowing the President to convict foreigners to expulsion the Alien Friends Act created "another mode of trial by jury."[98] Therefore, they argued the act violated Article 3, Section 2 of the Constitution, which provides that "trial of all crimes shall be by jury."[99] Furthermore, since aliens could be banished on mere suspicion without the opportunity to defend

[94] "By Request," 1.
[95] Henry Tayler, et al., "To Albert Gallatin Esquire Representative in Congress for the district composed of the Counties of Greene, Washington and Allegheny," *Herald of Liberty*, October 1, 1798, 2-3.
[96] Garland and Pollard, "Resolutions of the People of the County of Hanover," 1-2.
[97] "To the General Assembly of the State of Virginia," 2.
[98] "The Memorial of the Subscribers, Inhabitants of Queen's County," 2.
[99] U.S. Constitution, art. 3, sec. 2.

themselves or notice of the nature of the accusation, the petitioners pointed out the law "set aside the just and proper regulations necessary to be observed in all criminal prosecutions."[100] The protesters of Orange County (Va.) argued the Alien Friends Act violated the Fifth Amendment to the Constitution by authorizing the deportation of aliens "Without evidence, without counsel, without a hearing, without every assigning a reason for the information of the party, or in responsibility for the public."[101] According to this amendment, "no person shall be deprived of life, liberty, or property, without due process of law."[102] For the petitioners, the right to trial by jury and due process of law were not only secured by the Constitution but should also be considered as the natural rights of man. Bradburn has pointed out the petitioners referred to "inalienable natural rights, broadly considered, that they believed existed before and without government."[103] A petition from Woodford County (Ky.) for instance argued, "trial by jury, and self-defence are among the inseparable rights of freemen."[104] Moreover, the Republican minority in the Philadelphia House of Representatives claimed in their petition that the Alien Friends Act expanded the powers of the President "at the expense of the powers of the Courts and Juries, and the rights of man."[105]

[100] "By Request," 1.
[101] "Address of the People of the County of Orange," 2.
[102] U.S. Constitution, amend. V.
[103] Bradburn, *The Citizenship Revolution*, 187.
[104] John Tanner and Herman Bowman, "Resolutions of the Inhabitants of Woodford County," *Palladium of Liberty*, Aug. 21, 1798, 2.
[105] "Protest of the Minority of the House of Representatives of this State against the Address to the President of the United States, as promised in our last: Dissent on Address to the President," *Kline's Carlisle Gazette*, February 6, 1799, 2-3.

"Persons" according to the Constitution

The argument that the Alien Friends Act violated the constitutional rights of aliens relied on the shared understanding of the petitioners that aliens were parties to the Constitution. The petitioners pointed to the ambiguous language of the Constitution in their claim aliens were entitled to constitutional protections in all juridical proceedings. Specifically, they asserted the general word "persons" in these articles of the Constitution comprehends both citizens and aliens. As a result, the Essex County (Va.) petitioners argued "aliens, who are persons," could not be "deprived of their liberty of remaining here."[106] The claim aliens were parties to the Constitution also rested on the understanding of mutual allegiance. According to the view of mutual allegiance, aliens were bound to submit to the rules of the United States during their residency in exchange for protection and security by American laws. As the petitioners of Orange County argued:

> "although the persons thus subjected to absolute will are aliens, not citizens; yet as alien friends residing within the jurisdiction of the United States and owing allegiance in that quality they are as well as citizens under the protection both of the law and constitution of the United States, and of the laws, constitutions and declarations of the rights of the individual states."[107]

The minority of the Philadelphia legislature held the same interpretation. Since "alien friends are completely subject here to powers of Courts and Juries", the petitioners declared that alien residents "ought to be entitled to the benefit of Juries of their temporary vicinage, while residence is maturing their citizenship."[108]

When the Framers drafted the Constitution, they did not make a clear distinction between the rights of citizens and non-citizens. As a result, the issue whether the Constitution extended to

[106] "To the General Assembly of the State of Virginia, the memorial of the people of Essex,"2.
[107] "Address of the People of the County of Orange," 2.
[108] "Protest of the Minority of the House of Representatives of this State against the Address to the President of the United States," 2.

immigrants was still unresolved after the passage of the Alien and Sedition Acts. An analysis of the content of the petitions against the laws demonstrates that petitioners promoted a concept of popular sovereignty through which they claimed they could not only legitimately discuss and criticize the Alien Friends Act at assemblies and through petitions, but also could declare the act violated the constitutional rights of aliens. The view aliens were parties to the Constitution relied on the view aliens were persons under the Constitution and the understanding of mutual allegiance. The objections to the act were not about the political rights of foreigners, such as alien suffrage, but mainly to their civil rights. Specifically, the petitioners considered the expulsion of aliens without a trial by jury or due process of law to be inhumane and unconstitutional. The defense of these constitutional rights therefore demonstrates that the notion alien residents were entitled to guarantees of civil rights under the Constitution enjoyed the full support from the broad and diverse petition movement against the Alien and Sedition Acts.

Chapter 3. The Congressional Debates

Upon arrival of the petitions in Congress in January and February 1799, several Federalists conceived the local protests as "plain indications of the principles of that exotic system which convulses the civilized world." These Federalists accused the petitioners of spreading revolutionary, dangerous ideas, which they associated with France and in their view threatened to destruct American society. As the Federalists could "form no opinion of their [French government] future designs toward our country," they rendered it necessary to uphold the Alien and Sedition Laws. The Federalists furthermore stated the government would never surrender "any established principles of law or government to the suggestions of modern theory." Moreover, they argued the members of Congress owed a duty to their country "to respect the lessons of experience and transmit to posterity the civil and religious privileges which are the birthright of our country." Essentially, the Federalists invoked tradition and precedent to delegitimize the arguments of the petitioners. With the advantage of established principles of law and government, the Federalists proclaimed themselves as the ultimate winners of the Alien and Sedition Acts debates.[109]

As this chapter points out, though, the debates on the petitions against the Alien and Sedition Acts did not produce a clear winner. It is argued that although the interposition attempts of the petitioners failed, the congressional debates on the petitions established the groundwork for future thinking on the rights of aliens. The first part of this chapter discusses the response of the Federalists in Congress to the petitions against the Alien and Sedition Laws. Even though Federalists' attempts to prevent Congress' consideration of the petitions failed, it is argued they succesfully limited the chance of repeal of the Alien and Sedition Laws. In the second part the Federalist defense of the constitutionality of the Alien Friends Act is analyzed to demonstrate the

[109] *Annals of Congress*, House of Representatives, 5th Cong., 3d sess., 2992.

diverging views over aliens' rights between the petitioners and Republicans on the one hand and the Federalists on the other. When the Federalists-dominated Congress rejected the notion that the government had exceeded its constitutional limits with regards to the Alien Friends Act and Sedition Act, the petitioners failed to achieve a successful interposition. As noted in the former chapter, a successful interposition occurred when the government reversed policy by conceding the law exceeded its constitutional powers, or when the people themselves reversed the constitutional order. In the final section of this chapter it is concluded, however, that the petitions against the acts neither produced a repeal nor put the Federalists out of control in the elections of 1799. Nevertheless, an examination of several judgements of the Marshall Court and Fuller Court demonstrates that in the long term, the Supreme Court upheld the petitioners' view aliens could claim protective rights under the Constitution.

Attempts to define the scope of the right to petition

When the first petitions were introduced in the House of Representatives, the Federalists immediately declared the objections of the petitioners against the Alien and Sedition Acts were unfounded. The Federalists first argued the wide-spread opposition to the Alien and Sedition Acts was the result of misinformation about the legislation, or rather the consequence of ignorance of the petitioners. Robert Goodloe Harper (Sc.), one of the most fanatic promoters of the acts in the House, claimed "he had met no individual who did not approve of these laws." As such, he believed the "ferment which had been raised" was the consequence of ignorance among the petitioners about the Sedition Act and Alien Friends Act. Harper characterized the organization of petitions throughout the states as "armed opposition to these laws, and consequently to this government."[110]

[110] Ibid., 2425; 2436.

In his opinion, the best approach to these tumultuous meetings was to give all necessary information to the people of the United States by printing at least 20.000 copies of the laws in the newspapers. Other Federalists also argued the claims of the petitions were not based on any facts. Some declared the petitions were part of a larger Republican strategy to overthrow the Federalist government. James A. Bayard (De.) suggested the Republicans aimed to overwhelm Congress with petitions and remonstrances in order to "sever their connection in public opinion with the French interest, and to establish a new foundation of popularity."[111] Others rejected the proposal of Harper because they suggested only the courts could decide on the constitutionality of laws. John Rutledge (Sc.) mentioned several judges had already held the legislation constitutional, and he therefore declared it unnecessary "to make an appeal to the people" to gather their opinion on the laws.[112] William Gordon (N-H) further commented the distribution of the laws would only encourage more armed opposition. He stated, "if they determine them the unconstitutional, they will also determine to oppose their execution."[113]

Naturally, the Republicans rejected the accusations of the Federalists. They pointed out the petitioners already possessed all the information made in favor of the legislation. This was also the case; the petitioners had access to the discussions and texts of the Alien and Sedition Acts through newspapers and if not, the laws were presented to them at the onset of the petition meetings. Nevertheless, some of the more extreme Federalists still declared the arguments were unfounded and even attempted to hinder the referral of the petitions to the Committee of the Whole for consideration. As such, these High-Federalists attempted to determine the scope of the right to petition. These Federalists suggested the government had the right to refuse the consideration of

[111] Ibid., 2894-2895.
[112] Ibid., 2446.
[113] Ibid., 2448.

petitions that contained seditious language. William Gordon for instance objected to the referral of the petition from Amelia County (Va.) because "it contained a libel upon every measure of this Government since its first establishment." He further commented "if a stop was not put to the presenting of such petitions as these, this House would be considered as a place consecrated to abuse."[114] The Federalists rebutted the reaction of Republicans to consider the petitions as representative to the opinion of the people. Samuel Sewell (M), for example, did not consider the petitions as "real pressure upon the people, but as evidence of the seditious feelings and seditious principles."[115] And although Isaac Parker (Ma.) emphasized the right of the people to petition their government, he nevertheless objected to the consideration of the petitions on the grounds that "this House has a right to protect itself against abuse, and to see that the language of petitions is decent and proper."[116]

The Federalists also opposed the referral of the petition from the natives of Ireland. The objections these aliens made against the Alien Friends Act were defined as attempts to distribute dangerous ideas among the American people. Sewall pointed out the aliens' true aim was not a repeal of the Alien legislation, but rather "by complaining of the Government of the Union, to spread a seditious spirit throughout the country."[117] It should be noted that discomfort to consider petitions from aliens was articulated on both sides of the aisle. Republican John Nicholas (Va.), brother to Wilson Carey and George Nicholas, did not prefer "the petitions of citizens to be blended with this [the petitions from aliens]."[118] Nevertheless, other prominent Republicans such as Edward Livingston (NY) and Albert Gallatin (Pa.) emphasized the duty of Congress to consider

[114] Ibid., 2799.
[115] Ibid., 2886.
[116] Ibid., 2800.
[117] Ibid., 2884.
[118] Ibid., 2884-2885.

every petition. Gallatin pointed out "it had been a uniform rule in this House, that whenever petitions come which relate either to particular claims (…) they are referred." He furthermore added that "if arrangement arguments contained in these petitions were to be made, it ought to be done by a person friendly to them."[119] Ultimately, the effort of High-Federalists to define the meaning of the right to petition by rejecting the texts based on language and authorship failed. Aware they could not deprive the people – whether enfranchised or not – of their right to petition the government, the Federalists therefore suggested the petitions were referred to a select committee for consideration. This motion was accepted, 51 to 48. Subsequently, a committee was appointed that consisted of four Federalists and one Republican with the task to review the petitions and present the findings in a report to Congress.[120]

When the committee report on the petitions was made public on February 21, 1799, it quickly became clear this Federalists-dominated committee essentially embodied the reaction of the Federalists to the opposition of the Alien and Sedition Acts. The main conclusion of the lengthy report consisted of resolutions that declared it inexpedient to repeal the Alien Friends Act, the Sedition Law, or other laws relating to the Military and Navy establishments. The arguments made in defense of the constitutionality of the Alien and Sedition Acts echoed earlier remarks of the Federalists before the passage of the laws in June 1798. The declarations of the report also mirrored the reaction of the Federalist minority of the Virginia House of Delegates to the Virginia resolutions a month earlier.[121] Both the reply from Virginia and the report of the committee considered the petitions attempts to undermine the authority of the federal government. According

[119] Ibid., 2889.
[120] Ibid., 2884-2905; 2957-2959.
[121] For a discussion on the background of the Minority Report of the Federalist minority of the Virginia state legislature, See Kurt T. Lash and Alicia Harrison, "Minority Report: John Marshall and the Defense of the Alien and Sedition Acts," *Ohio State Law Journal* 68, no. 2 (2007): 435-516.

to John Taylor from the Virginia assembly, the opposition "sought to be excited into general hostility against the government of our country" and was intended to "sap the foundation of our union."[122] The report used similar language and regarded the "insinuations derogatory to the character of the Legislature and the Administration." Furthermore, the committee was outraged "that the public councils should ever be invited to listen to other than expressions of respect."[123] Therefore, the select committee showed bias in favor of the Federalists. Whereas the Federalists failed in their initial attempt to determine the scope of the right to petition and prevent the consideration of the Alien and Sedition Act petitions in Congress, they nevertheless succesfully limited any chance of the repeal of the Alien and Sedition Laws by appointing a pro-Federalist committee to examine the petitions.[124]

The Federalists' response: Citizenship as a condition for constitutional rights

In the report of the select committee several arguments were presented to counter the claim the expulsion of foreigners under the Alien Friends Act deprived aliens of their civil rights. First, the Federalists rejected the notion the Congress lacked the power to pass legislation restricting immigration to begin with. Rather, the committee justified the expulsion of aliens as a power necessary to provide for the national defense. The Federalist majority in the Virginia state legislature, for instance, argued "the power of protecting the nation from the intrigues and conspiracies of dangerous aliens (…) seems to be of the class with those necessarily delegated to

[122] Henry Lee et al., *The Address of the Minority in the Virginia Legislature to the People of that State; containing a Vindication of the Constitutionality of the Alien and Sedition Laws,* (Richmond: T. Nicolson, 1799), 5.
[123] *Annals of Congress*, 2986.
[124] After the vote of the House on the resolutions of the committee on February 21, 1799, petitions were still arriving in Congress. As such, the committee only considered several petitions from the states of New York, New Jersey, Pennsylvania, and Virginia. Most petitions from the counties of Kentucky and Virginia were only considered by the state legislatures of the respective states. From March 1799 onwards, the stream of petitions against the Alien and Sedition Acts slowly subsided.

the general government."[125] In Congress, the report of the select committee referred to Article IV, Section 4, to point out the Constitution required the federal government to "guarantee to every State a republican form of government and (…) protect each of them against invasion."[126] Furthermore, the select committee claimed Congress was empowered by Article V, Section 8, "to make all laws which shall be necessary and proper" to provide for the common defense of the nation.[127] As such, the authority of the President to expel dangerous aliens who might be engaged in foreign subversion was "a measure necessary for the purpose of preventing invasion and of course a measure that Congress is empowered to adopt."[128] The committee applied the same reasoning to demonstrate the necessity of the laws respecting the naval armament, standing army, and revenue of the nation. To emphasize the requirement of the Alien Friends Act and other defense measures, the committee appealed to examples of alien conspiracies in several states across the Atlantic. "France appears to have an organized system of conduct towards foreign nations' to bring them (…) under the dominion of her influence and control," the report stated. The committee noted the collapse of states such as Egypt and Switzerland at the hands of French emissaries and spies vindicated the need for "precautionary and protective measures." [129]

Secondly, the Federalists rejected the petitioners' view aliens were parties to the Constitution. As noted in the second chapter, the petitioners stressed a view of mutual allegiance; the obligation of aliens to submit to American law during their residence granted them protection and security under the Constitution. Instead, the Federalists promoted the understanding the

[125] Lee et al., *The Address of the Minority in the Virginia Legislature to the People of that State,* 7.
[126] U.S. Constitution, art. 5, sect. 4
[127] Ibid., art. 1, sect. 8, cl. 18.
[128] *Annals of Congress*, 2986.
[129] Ibid., 2990. Moreover, the Federalists rejected the petitioners' argument the Alien Friends Act interfered with the power of the states to regulation of migration of persons to the different states. Instead, the select committee argued the power to remove dangerous aliens was not the same as preventing emigration to the states. Furthermore, Federalists maintained the article of the Constitution to which the petitioners referred solely applied to the importation of slaves, not to the migration of foreigners.

Constitution was a social contract among the parties who drafted it. From this view, constitutional protections were only available to the members who entered the contract, namely American citizens. According to the report of the committee:

> "It is answered, that the Constitution was made for citizens, not for aliens, who of consequence have no rights under it, but remain in the country and enjoy the benefit of the laws, not as a matter of laws, not as a matter of right, but merely as a matter of favor, and permission, which favor and permission may be withdrawn whenever the Government charged with the general welfare shall judge their continuance dangerous."[130]

Since aliens never entered the compact, the Federalists argued, they could not receive any constitutional protections. As such, the committee asserted membership of the community, or rather citizenship, was the prerequisite for the availability to constitutional rights. It was pointed out that aliens, as non-parties to the Constitution, were instead governed by the Law of Nations. Therefore, the report concluded it inexpedient to repeal the Alien Friends Act as the law did not deprive aliens of any constitutional rights.[131]

As the Federalists suggested aliens were subject to the jurisdiction of the Law of Nations, they relied on the statutes of international law as well as the Constitution to argue the repeal of the Alien Friends Act was inexpedient. They pointed out the Law of Nations recognized the exclusion of foreigners as an inherent power of sovereign states. As such, the Federalists argued the federal government possessed the right to expel foreign-born residents without trial by jury and due process, especially if the alien in question threatened the country's order and stability. This proposition relied on the understanding that the residency of aliens was granted to them by the national government as a favor, not as a right. According to the report of the committee: "The

[130] Ibid., 2987.
[131] Ibid.

asylum given by a nation to foreigners, is mere matter of favor, resumable at the public will. On this point, abundant authorities might be adduced, but the common practice of nations attests the principle." The report further stated that "the provisions in the Constitution relative to presentment and trial offences by juries, do not apply to the revocation of an asylum given to aliens."[132] Since aliens never owed the right to remain in the United States in the first place, the Federalists argued foreigners could not claim any rights under the Constitution. Therefore, the expulsion of aliens did not deprive them of any civil rights. The Federalists of Virginia did acknowledge "a vested right is to be taken from no individual without a solemn trial." However, they defended the law by asserting that "the right of remaining in our country is vested in no alien; he enters and remains by the courtesy of the sovereign power, and that courtesy may at pleasure be withdrawn."[133]

Before the resolution of the report on the inexpediency of the repeal of the Alien Friends Act was put to a vote in the House, Albert Gallatin delivered a speech on behalf of the Republicans to convince the House members to rethink their decision on the law. Gallatin, a naturalized representative from Pennsylvania, argued the 18,000 signatures from his state alone demanded an earnest reconsideration of the objections of the petitions. The Republicans attacked the constitutionality of the Alien Friends Act on the same grounds as the petitioners; because the law exceeded those specific powers granted to Congress, violated the separation of powers, and infringed upon the individual rights of aliens. Furthermore, the Republicans rejected the membership concept of Federalists that required citizenship as a condition for the entitlement to constitutional protections. Like the petitioners, Gallatin emphasized the Constitution's use of "persons" instead of "citizens" in the applicable clauses. Furthermore, the Republicans also

[132] Ibid.
[133] Lee et al., *The Address of the Minority in the Virginia Legislature to the People of that State,* 3.

maintained the relationship between alien residents and the government rested on their mutual allegiance. Gallatin pointed out many aliens have "by a formal declaration before our courts, given evidence of their intention of becoming citizens and of renouncing their former allegiance."[134] As these foreigners subjected themselves to American law, he claimed resident aliens should receive protections under the Constitution. Gallatin asserted "under all these circumstances, it may be doubtful whether a great proportion of these aliens are not entitled to the rights of denizens." He further commented the membership concept exposed aliens to violations of "the dictates of humanity and justice" and would "discriminate one class from the other."[135] Despite these efforts of the Republicans, the petitioners failed to achieve successful interposition of the Alien and Sedition Laws. When the members of Congress subsequently voted on the report, a majority supported the recommendations of the Federalists-dominated committee. In the elections of 1799 that soon followed, the interposition of the petitions also did not produce the desired result. The Federalists were able to maintain their majority in Congress. As Bradburn has noted, the Federalists were even able to increase their numbers in Congress by picking up extra seats.[136] By contrast, Fritz has concluded in *American Sovereigns* the victory of the Republicans in the 1800 elections was the result of the successful interposition of the Kentucky and Virginia resolutions. However, no direct evidence can be found either the petitions or the resolutions of the states of Kentucky and Virginia produced the electoral triumph of the Republicans.[137]

[134] *Annals of Congress*, 3000.
[135] Ibid.
[136] Bradburn, "A Clamor in the Public Mind," 593. Bradburn has pointed out these pickups mostly took place in the states where the participation in the petitioning against the Alien and Sedition Acts was minimal or non-existent, such as Georgia, North Carolina, and South Carolina.
[137] Fritz, *American Sovereigns*, 210.

The long-term impact of the Alien and Sedition Acts petitions

In the years following the congressional debates on the petitions, both the notion of membership of the Federalists and the concept of mutual obligation supported by the petitioners and Republicans were applied in judicial issues concerning the rights of aliens.[138] As such, the congressional debates on the constitutionality of the Alien Friends Act established the groundwork for future thinking on aliens' rights. More importantly, however, is that the petitioners and Republicans laid the basis for the future interpretation that aliens could claim constitutional protections such as the right to trial or due process of law. Almost a century after the debates on the Alien Friends Act, the Fuller Court set a precedent all foreign residents subject to criminal proceedings were entitled to the same protections under the Constitution as citizens. As a result, the Court formally destroyed the Federalists' charge citizenship was required as a condition for the protection under the Constitution. According to Gerard L. Neuman, the decisions of John Marshall's Court involving aliens represented a crucial step in this process. Before Marshall was nominated as Chief Justice, he had articulated a more cautious approach to the Alien and Sedition Acts in comparison to other Federalists.[139] For example, Marshall declared in a letter to his constituents published in the *Universal Gazette* he would not have voted for the laws, had he been in Congress at the time of its passage. He stated, "I should have opposed them, because I think them useless, and because they are calculated to create, unnecessarily, discontents and jealousies, at a time when our very existence as a nation, may depend on our union."[140] In a speech to Congress, furthermore, Marshall emphasized the limits of the jurisdiction of the federal

[138] Geoffrey Heeren argues that in several deportation and exclusion cases the Courts have upheld the Federalists' vision of membership, such as *Chae Chan Ping v. United States*, better known as the "Chinese Exclusion Case." See, Geoffrey Heeren, "Persons Who Are Not the People: The Changing Rights of Immigrants in the United States," *Columbia Human Rights Law Review* 44, no. 2 (2013): 377-79.
[139] Neuman, *Strangers to the Constitution*, 60-61.
[140] J. Marshall, "Answer to a Freeholder," *The Universal Gazette*, October 18, 1798, 1.

government over aliens. He argued, "what power does a court possess to seize any individual and determine that he shall be adjudged by a foreign tribunal? Surely our courts possess no such power."[141] Neuman has pointed out the judgements of the Marshall Court regarding the rights of aliens marked the beginning of the Court's favorable attitude to the petitioners' understanding that alien could claim legal protection. Neuman has argued the Court's emphasis on the Constitution as a "fundamental and paramount law" supported the arguments of the petitioners that foreigners could claim constitutional protections.[142] As such, the Marshall Court referred on several instances to the authority of federal treaties as the sources of legal protection for resident aliens. Nevertheless, Neuman has observed that for a long time no opportunity presented itself time to decide on the question whether aliens possessed constitutional rights. As such, the Court remained silent on this issue until the second half of the nineteenth century.[143]

At the end of the nineteenth century, two cases regarding the civil rights of Chinese immigrants presented an opportunity of the Supreme Court to break this impasse and establish that aliens were entitled to most of the constitutional rights afforded to American citizens. In *Yick Wo v. Hopkins* (1886) the Court held that alien residents could assert the rights of due process and equal protection. Like the petitioners, the Court pointed out the Constitution used the term "persons" rather than "citizens" in the respective clauses. The Court therefore rejected the view the Constitution was confined to the protection of citizens. Instead, the Court declared "these provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality."[144] Three years later, in *Wong Wing v. United States* (1896) the Court applied the same reasoning of *Yick Wo v. Hopkins* to rule illegal

[141] Annals of Congress, House of Representatives, 6th Cong., 1st sess., 607.
[142] Gerald Neuman, "Whose constitution?," *Yale law journal.* 100, no. 4 (1991): 939.
[143] Ibid., 940.
[144] Yick Wo v. Hopkins, 188 U.S. 356 (1886)

immigrants could not be sentenced to hard labor without due process of law or trial by jury. The interpretation of the Court also mirrored the petitioners' view of the mutuality of obligation – the understanding that because alien friends were subject to American law, they were entitled to constitutional protections. The Court stated that:

> "A resident, alien born, is entitled to the same protection under the laws that a citizen is entitled to the same protection under the laws that a citizen is entitled to. He owes obedience to the laws of the country in which he is domiciled, and, as a consequence, he is entitled to the equal protection of those laws."[145]

The Supreme Court established a precedent in these cases that all foreign residents subject to criminal proceedings were entitled to the same protections under the Constitution as citizens. Therefore, contrary to Kramer's argument that popular constitutionalism was entirely replaced by legal aristocracy, these judgements of the Court demonstrate that the influence of the people over constitutional interpretation did not necessarily decline. The precedent on the rights of aliens furthermore both affirms and complicates Rosanvallon's counter-democratic model of civic engagement. His theory is confirmed as the Supreme Court acts as the long-awaited representative of the petitioners against the Alien and Sedition Acts by incorporating their views on the rights of aliens in court-decisions. As such, "justice is rendered by the judges in 'the name of the people'." However, when Rosanvallon argues reactive movements are unable to contribute to positive solutions and can only assert "negative sovereignty" through veto of government policies, the Supreme Court's complicates his claim by providing evidence that the petition movement was able

[145] Wong Wing v. United States, 163 U.S. 228 (1896)

to shift future thinking and contribute positively to a policy change in the area of immigrants' rights.[146]

This chapter has investigated the response of the federal government to the petitions against the Alien and Sedition Acts. It is argued that despite the failure of the petitioners to interpose and cause the repeal of the legislation, the congressional debates nevertheless laid the foundation for future thinking on the rights of aliens. These debates have demonstrated the deep divisions between the different understandings of the entitlement of immigrants to constitutional rights. In the specific defense of the constitutionality of the Alien Friends Act, the Federalists promoted the view the Constitution was a social contract between members, namely the citizens of the United States. They therefore concluded only citizens could claim constitutional rights. The Republicans, on the other hand, supported the arguments of the petitioners and suggested the concept of mutual allegiance extended the protections of the Constitution to resident aliens. Both notions have influenced Court decisions over the years, but the view of the petitioners that alien residents enjoy several constitutional rights was affirmed by the Court and became precedent a century after the Alien and Sedition Acts controversy. From now on, aliens could claim certain constitutional protections in criminal procedures.

[146] Rosanvallon, *Counter-Democracy*, 191-192. In many cases on the naturalization, exclusion and deportation of aliens, their rights are still disputed. See, Heeren, "Persons Who Are Not the People: The Changing Rights of Immigrants in the United States," 377-379.

Conclusion

Main findings

This study has attempted to demonstrate that the opposition to the Alien and Sedition Acts of 1798 significantly contributed to the constitutional foundations of the rights of aliens in the United States. One of the key findings is that ordinary citizens and foreigners assumed an essential role in this process. Therefore, this study concludes that these groups who were excluded from the political process through suffrage were not politically powerless in the early Republic. Directly after the passage of the Alien and Sedition Acts, ordinary citizens and aliens assembled and drafted petitions to Congress and their state legislatures praying for a repeal of the Alien Friends Act and Sedition Act. Through the practice of petitioning these protesters gained access to the political domain. Although the petition movement was heterogeneous and missed organization at the national level, the protesters maximized the impact of their petitions through the vehicle of the partisan press. Subsequently, the petitions against the Alien and Sedition Acts ignited a national debate about the constitutional position of aliens, an issue left unresolved by the Framers of the Constitution. As the petitions were considered in Congress regardless of the authorship of the petitioners, it can be concluded the protesters effectively employed petitioning as a mechanism of both political and public persuasion.

This research has further shown that in the long-term the petitioners contributed to the manifestation of the long-standing position that foreign residents are entitled to basic civil rights under the Constitution. An analysis of the petitions demonstrates the petitioners promoted a conception of popular sovereignty that included a right of interposition, through which they claimed they could legitimately criticize the actions of government and declare the act unconstitutional. The analysis further provides evidence the petitioners put forth an understanding of the constitutional position of aliens that emphasized alien residents were entitled to certain civil

rights under the Constitution, namely the right to a trial by jury and due process of law. When the petitions were considered by Congress, however, the Federalist majority immediately countered the understanding that aliens were parties to the Constitution. Rather, the Federalists promoted the notion that citizenship was the prerequisite for constitutional rights. In turn, this view was challenged by Republicans who supported the petitioners and claimed the establishment of constitutional rights in the form of citizenship would expose alien residents to inhumane treatment and relegate them to second-class citizenship. Despite these efforts by the Republicans, the Federalists-dominated House effectively blocked the interposition attempt to repeal the legislation, and thus the issue over constitutional position of aliens remained unsolved for a long time. The two competing visions put forth by the petitioners and the Republicans on the one hand and the Federalists on the other would both inform future constitutional thought. However, when the issue of aliens' rights arose again and was put before the Supreme Court at the end of the nineteenth century, the Court embraced the petitioners' position that aliens enjoy basic constitutional rights. Although their vindication occurred a century later, the petitioners against the Alien and Sedition Acts contributed to the establishment of a precedent that foreign residents were entitled to the same protections under the Constitution as citizens in criminal proceedings.

Situation in historiography

In line with the works of Kramer in *The People Themselves* and Christian Fritz in *American Sovereigns*, this research demonstrates that in post-revolutionary America ordinary citizens and even aliens assumed active roles for themselves in the interpretation of the Constitution. In accordance with Kramer's notion of "popular constitutionalism," the petitioners invoked a concept of popular sovereignty that included the rights to monitor and criticize the government.

Furthermore, in line with the work of Fritz, the petitioners promoted a version of the right of interposition through which they could declare laws unconstitutional without undermining the authority of the federal government. Nevertheless, this research also complicates the works of these constitutional scholars. When Fritz concludes that the interposition of the Kentucky and Virginia resolutions should be considered as successful because enfranchised citizens changed the constitutional order through the elections of 1800, he provides no direct evidence of the link between the resolutions of 1798 and the national victory two years later. An examination of the victory of the Federalists in the 1799 elections further weakens his argument. Specifically, since Bradburn has pointed out that the Federalists achieved a great victory in Virginia. Nevertheless, the absence of evidence does not mean the absence of a link between the interposition attempt of the Kentucky and Virginia resolutions and the Republican victory in the 1800 elections. As such, the effectiveness of the interposition attempt in the case of the Alien and Sedition Acts provides a new avenue for research.

Moreover, the triumph of the petitioners through the judicial process complicates Kramer's argument that legal aristocracy and popular democracy are mutually exclusive. Like Charles A. Beard, Kramer characterizes constitutional history as a continuous struggle between legal elites and ordinary people.[147] Kramer argues that the dominance of popular constitutionalism was gradually replaced by judicial supremacy of the legal aristocracy in the second half of the nineteenth century. However, the Supreme Court vindication of the petitioners' position on the constitutional place of aliens reject Kramer's argument in two ways. First, the Supreme Court judgement demonstrates that the influence of the people over constitutional interpretation did not necessarily decline. Furthermore, the Court decision shows that popular sovereignty and judicial

[147] Hulsebosch, "Bringing the People Back In," 653-654.

authority can complement each other, and therefore legal aristocracy and popular democracy are not necessarily mutually exclusive.

This research has relied on Pierre Rosanvallon's counter-democratic model to evaluate the activity of the petitioners outside the framework of electoral-representation. In *Counter-Democracy* Rosanvallon explores counter-powers through which citizens have expressed distrust as elements of the democratic system, and as such, have exercised control or exerted pressure. In the case of the opposition to the Alien and Sedition Acts, petitioners used the mechanisms of oversight (surveillance) and prevention (veto power) to criticize the legislation and attempt a congressional repeal of the acts. Furthermore, they exercised the power of judgement indirectly through the Supreme Court decision that embraced the petitioners' position that aliens were entitled to civil rights under the Constitution. As such, "justice is rendered by the judges in 'the name of the people'."[148] However, this research has also demonstrated the analysis of Rosanvallon is incomplete. In his discussion of the mechanism of prevention, he has emphasized the inability of reactive movements to contribute to positive solutions and policy changes. Rosanvallon maintains these opposition groups can only assert "negative sovereignty" through their veto power of government policies. Nevertheless, Supreme Court judgement demonstrates that the petition movement against the Alien and Sedition succesfully contributed to future policy decisions in the area of immigrants' rights.

Lessons from the past

Scholarship on the Alien and Sedition Acts has generally emphasized the role of political elites such as Madison and Jefferson in the protest of legislation through the Kentucky and Virginia

[148] Rosanvallon, *Counter-Democracy,* 191-192.

resolutions or has focused on the effects of the Sedition Act on the Republican press. By shifting the attention to the protesters who petitioned Congress and the state legislatures in the years 1798 and 1799, this study has provided a new perspective to existing scholarship that includes the political voices of ordinary citizens and aliens. Furthermore, by revealing the constitutional foundations of the rights of aliens in the United States and the competing views of the petitioners and the Federalists that have influenced constitutional decisions, this research can inform the contemporary and future debates on the legal status of aliens in the United States.

The debates over the immigration policy of the Trump administration demonstrate that the legal status of aliens remains a contentious issue to America to this day. On June 27, 2019, the Supreme Court rejected the rationale of the administration's plan to include a citizenship question in the 2020 Census. When the administration announced its decision to add the question to the Decennial Census, it explained that the inclusion of the question would help the government to better enforce the Voting Rights Act. The decision of the administration immediate drew heavy criticism for its actual attempt to discourage immigrants – both legal and illegal - and people from communities of color to participate in the census out of the fear to "expose their non-citizen family members, neighbors, or loved ones to repercussions."[149] Opponents have pointed out the inclusion of the question will further exacerbate the undercount of "vulnerable communities", and as a consequence, could "dramatically reduce the political power of, and federal funding allocated to, immigrant communities of color for the next ten years."[150] So far, at least eighteen states, fifteen

[149] Jonathan Topaz and Skadden Fellow, "How the Census Citizenship Question Could Affect Future Elections," American Civil Liberties Union, October 29, 2018, https://www.aclu.org/blog/voting-rights/fighting-voter-suppression/how-census-citizenship-question-could-affect-future

[150] Samantha Schmidt, "California, NY sue Trump administration over addition of citizenship question to census," *The Washington Post*, March 27, 2018, https://www.washingtonpost.com/news/morning-mix/wp/2018/03/27/california-sues-trump-administration-over-decision-to-add-citizenship-question-to-census/?utm_term=.ead5eeab9ee3; Jonathan Topaz and Skadden Fellow, "Court Blocks Trump's Plan to Add a Citizenship Question to 2020 Census," American Civil Liberties Union, January 15, 2019,

cities, and numerous civil rights organizations have sued the Trump administration, arguing the citizenship question violates the Enumeration Clause of the Constitution. By contrast, the administration has defended the constitutionality of the citizenship question as a "lawful exercise of executive power."[151] Furthermore, supporters of the decision questioned: "Why should the census include noncitizens in the first place?", and, moreover: "Why should noncitizens, including illegal immigrants, be able to increase the political power of some Americans while decreasing the political power of others?"[152] As such, the heated discussion over the 2020 Census is part of the constitutional controversy whether aliens count and if protections of the government are also available to them, a controversy that has its origins in the debates over the Alien and Sedition Acts. Although the Supreme Court has recently held that the reason provided by the Trump administration "appears to have been contrived," the Court has not fundamentally rejected the inclusion of the citizenship question.[153] As a result, the Trump administration could still attempt to add the question, provided a better explanation is offered to include the question in the census. Given the prevalence of the issue whether aliens are legal persons to whom governmental protections are available, this research on the debate over the rights of aliens during the Alien and Sedition Act controversy offers useful insights for the current constitutional discussion on the citizenship question and future constitutional controversies.

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https://www.aclu.org/blog/voting-rights/fighting-voter-suppression/court-blocks-trumps-plan-add-citizenship-question-2020

[151] Michael Wines, "Why the Supreme Court's Rulings Have Profound Implications for American Politics," *The New York Times,* June 27, 2019, https://www.nytimes.com/2019/06/27/us/supreme-court-gerrymandering-census.html?action=click&module=inline&pgtype=Article

[152] Ben Weingarten, "Why Don't Democrats Want the Census to Find How Many Noncitizens Live in the United States?," The Federalist, February 21, 2019, https://thefederalist.com/2019/02/21/dont-democrats-want-census-find-many-noncitizens-live-united-states/

[153] Adam Liptak, "Supreme Court Leaves Census Question on Citizenship in Doubt," *The New York Times*, June 27, 2019, https://www.nytimes.com/2019/06/27/us/politics/census-citizenship-question-supreme-court.html

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