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Anonymous Political Speech in the American Tradition

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This *Liberty Brief* features a modified excerpt from an article recently published in the *Wyoming Law Review*, “Publius Was Not a PAC: Reconciling Anonymous Political Speech, the First Amendment, and Campaign Finance Disclosure.”

The full article is available at: <http://www.uwyo.edu/law/wyoming-law-review/>

INTRODUCTION

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.¹

Anonymous political speech has been the scorn of entrenched powers and the saving balm of emerging voices throughout English and American history. In its simplest terms, anonymous speech is communication that does not identify the speaker or identifies a synonymous persona.² Although for some, anonymous political speech is inherently negative, its value remains of highest constitutional import.

Unfortunately, modern campaign finance law eliminated many avenues for anonymous political speech in both federal and state arenas. Under today’s disclosure regimes, citizens who band together and spend as little as \$1,000 criticizing or complimenting federal officeholders may be forced to register and report as a political committee (PAC) with the Federal Election Commission (FEC).³ This includes identifying the group on advertisements and filing reports that include the names and addresses of the group’s donors with the FEC, which are then published online.⁴ Some state laws require such reporting from political bloggers who spend as little as \$91.38 for internet hosting.⁵

Ironically, today one of the most important influences on the ratification of the United States Constitution would face civil and possibly criminal penalties if it failed to register and report as a PAC. Publius, the collective author of *The Federalist Papers*, would have to register if they discussed a political issue in numerous states. As disclosure expands under federal law, Publius might also be ensnared in federal regulations. Even if this were not burdensome in itself, disclosure would reveal the identities of Alexander Hamilton, James Madison and John Jay as the organization, and risk diminishing Publius’s effectiveness.

Today’s zealous push for all-encompassing disclosure—which replaces political anonymity with complex, detailed reporting—injures our system of self government and is highly burdensome for average speakers. Disclosure is often treated as an absolute good,⁶ with reformers claiming anyone scared off from participating is just a “sissy.”⁷ Protecting anonymity is not an act of cowardice, but a principle central to protecting our rich, Western tradition of reasoned, public debate.⁸

This brief offers a history of anonymous speech and suppression of political speech generally. It also illustrates the benefits of anonymous speech to political discourse and participation in the American experiment.

Even when disclosure laws are simple enough for the average citizen to understand, they foreclose most avenues of anonymity. Simply, this is because these laws require political speech to include disclaimers that identify the speaker and for certain organizations to report the names of their contributors to the government.⁹ Unlike political corruption, anonymity is not an evil to be cured. In fact, considering the role of anonymous political speech in American history, its benefits to individual speakers and political discourse at large far outweigh its negative effects. This brief identifies three liberty interests in anonymity to secure: preventing prejudice, keeping the message central, and preventing retaliation from those in power. The importance of these interests is illustrated with prominent historical examples of anonymous political speech, from the American founding to today.

A. THE FEDERALIST PAPERS

Anonymous political speech played a defining role in founding the United States. Many citizens anonymously voiced their political opinions throughout the several states. A small sampling includes “An American Citizen” in Pennsylvania,¹⁰ “Agrippa” in Massachusetts,¹¹ “Cato” in New York,¹² “A Landholder” in Connecticut,¹³ “Civis Rusticus” in Virginia,¹⁴ “Civis” in South Carolina,¹⁵ and “A Freeman” in Rhode Island.¹⁶ In short, “American opinion writers used so many classical pseudonyms that their bylines read like the dramatis personae of a history play.”¹⁷ The most popular explication of the Constitution encouraging its ratification, however, was the joinder of Alexander Hamilton, James Madison, and John Jay under the pen name “Publius” to publish discourses collectively known as *The Federalist Papers*.¹⁸ *The Federalist Papers* were published almost exclusively in New York newspapers in 1787 and 1788.¹⁹

Anonymity was central to the success of *The Federalist Papers*. “No secret could have been more closely guarded than was the authorship of *The Federalist Papers*. Even Hamilton’s best friends did not know what he was doing; if he seemed busier than usual, it was ascribed to the flourishing state of his law practice.”²⁰ A 1792 French collection of *The Federalist Papers* named the authors, but did not identify the respective essays of Hamilton, Madison, or Jay; such identification did not occur until 1810, and even today there is still debate over authorship of certain essays.²¹

Many expressed prejudice against Hamilton, thus explaining his use of the name Publius. Hamilton often received attacks

“jeering at his foreign birth, his supposed racial identity, his illegitimacy and his putative links to the British Crown—attacks that set a pattern for the rest of Hamilton’s career. Since critics found it hard to defeat him on intellectual grounds, they stooped to personal attacks.”²² Gouverneur Morris, a fellow Constitutional Convention delegate, considered Hamilton “indiscreet, vain and opinionated.”²³ Even years after Hamilton’s death following a duel against Aaron Burr—the duel itself an indicator of Hamilton’s polarizing nature—John Adams quipped that Hamilton’s alleged “[v]ice, folly and villainy are not to be forgotten because the guilty wretch repented in his dying moments.”²⁴ Whatever the merit of these criticisms, Hamilton had ample reason to remain anonymous and thereby prevent prejudice against *The Federalist Papers*. The events surrounding the Constitution’s inception also explains Hamilton’s desire for anonymity. He opposed numerous Constitutional provisions at the drafting convention, and then decided to support its ratification.²⁵ Although media has

changed greatly since the founding era, it is quite likely Hamilton would have faced criticism for his “flip flop” had he attached his name to *The Federalist Papers* so soon after opposing the Constitution.²⁶ Hamilton’s anonymity meant to avoid prejudice and preclude obfuscation of his message, and these interests are still compelling justifications for speaking anonymously.

Unlike Hamilton, James Madison was not a controversial figure, but nonetheless he benefited from anonymity. Madison was a Virginian and given the localism of the time, his work would not have been as well-received under his own name in New York, nor might it have been published by New York newspapers.²⁷ Furthermore, in joining with a more controversial figure such as Hamilton, Publius’s work might not have been well-received in Virginia either absent anonymity.²⁸ Madison’s example is just as compelling as Hamilton’s, because it shows that anonymity is not merely a shroud for unpopular people, but is just as relevant for anyone seeking to present a clear message.

The Federalist Papers did not cause a sweeping ratification of the Constitution in New York, but they were a strong philosophical force. All nineteen federalist delegates to the New York ratifying convention came from New York City, including Hamilton himself, and were elected with the help of the papers.²⁹ Entering the convention in June of 1788, however, the federalists were outnumbered by antifederalists two to one.³⁰ Nevertheless, on July 26 after weeks of debate the New York convention adopted the Constitution after several antifederalists switched sides.³¹ In state ratifying conventions and among the

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public at large, *The Federalist Papers* advocated under the single voice of Publius, combining two voices from different regions with very different interests. “In the two state conventions where the Constitution was most bitterly contested and where its fate hung most precariously in the balance, ‘Publius’ was a potent force on the Federalist side.”³² *The Federalist Papers* must not be ignored when considering anonymous political advocacy, for without its benefit, it is quite likely that neither the First Amendment nor Constitution would exist as we know them, and therefore no legal basis on which to hinge anonymous debate would exist.

B. EARLY AMERICAN EXPERIMENTS IN SPEECH RETALIATION

While it is important to avoid prejudice and keep a focused message as Publius did, the ability to carefully speak truth to power is perhaps the most compelling reason for anonymous political speech. As American history illustrates, during the colonial and post-colonial eras, speaking without the protection of anonymity sometimes brought about grave and unfortunate results. In 1753, Daniel Fowle printed the pamphlet *The Monster of Monsters*, in which he shared his strong negative opinions of some members of the Massachusetts Legislature.³³ Due to suspicion of his authorship of this publication, Fowle was jailed for two days.³⁴ Ten years later in New York, Alexander McDougall spent three months in jail for publishing a handbill criticizing the New York Assembly.³⁵ In 1800, David Brown was sentenced to 18 months imprisonment under the Sedition Act for inscribing on a liberty pole in Massachusetts: “May moral virtue be the basis of civil government.”³⁶ In the 1830s, James Fenimore Cooper, author of the *Last of the Mohicans*, decried the negative role of the press and brought fourteen libel suits against various newspapers to quell negative discussions of his political views.³⁷ One theme remains constant: no one enjoys being criticized and, when given the opportunity, those in power will quell dissent.

In the early years of the United States, the Framers understood, somewhat imperfectly, that laws penalizing speech harmed a free society.³⁸ Knowledgeable of the history of Tudor and Stuart England, the Framers sought to entirely forbid freewheeling speech licensing, regulations, and bans that were so common in Britain.³⁹ Benjamin Franklin commented that whoever would “overthrow the liberty of a nation must begin by subduing the freeness of speech.”⁴⁰ Richard Henry Lee explained that the freedom of press and speech were fundamental rights and that “bad men could easily abuse a law made by good men who be-

lieved that freedom of the press should be restrained because it disturbed the operations of new governments.”⁴¹ John Adams reasoned that both speech and the press were integral to freedom because people have a “right, an indisputable, divine right, to that most dreaded and envied kind of knowledge. I mean of the character and conduct of their rulers.”⁴² In sum, Americans generally understood speech might sometimes be disruptive, uninformed and uncouth, but efforts to control it suppressed liberty no matter the parade of good intentions behind such efforts. To be certain, early aspirations for protecting speech were dashed—sometimes by those promoting its very virtue. For example, John Adams once proclaimed the importance of enabling citizenry to vigorously debate and discuss the qualifications of public servants. However, as president, he signed the Sedition Act,⁴³ largely due to public criticism against the government and Federalists.⁴⁴ Adams’s presidency favored punishing false, scandalous or malicious speech—if it pertained to him or his allies that is. The Sedition Act led to numerous investigations and convictions for controversial speeches attacking the character of John Adams or his administration.⁴⁵

Although “[t]he protection given speech and press was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people[.]”⁴⁶ even in the colonial and founding eras around the drafting of the First Amendment the American government failed to respect the principle time and again. Anonymity is one way to hinder retaliation from those in power, and must be considered a component of free speech. From the prying eyes of the IRS to revelations about the NSA spying on American citizens, current headlines only underscore the need for privacy. Anonymity is arguably more important today for “[t]here exists in modern

America the necessity for protecting all of us from arbitrary action by governments more powerful and more pervasive than any in our ancestors’ time.”⁴⁷

C. DEMOCRACY: AN AMERICAN NOVEL

Perhaps the best example of anonymous political speech following ratification of the Constitution came about a century into the American experiment, and it combines all three interests previously discussed—preventing prejudice, keeping the message central, and preventing retaliation from those in power. Henry Adams, great-grandson of President John Adams and grandson of President John Quincy Adams, was a historian and political socialite living in Washington, D.C. Henry Adams wrote the book *Democracy: An American Novel*. It was published

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anonymously and opened the public's eyes to political change centering upon a conflict of politics and morality, and effectively interrupted the career of a rising political star.⁴⁸

Democracy, though fictional, was aimed at derailing the career of Speaker of the House James G. Blaine.⁴⁹ In 1872, Blaine was accused of accepting \$2 million of stock in Union Pacific railroad.⁵⁰ Though a congressional investigation cleared him, “[o]n the basis of direct acquaintance, data obtained by word of mouth, and information in the public prints, [Adams] had come to think that Speaker Blaine was corruption incarnate . . .”⁵¹ Adams feared Blaine would be nominated for president in 1876 or possibly appointed secretary of state under the nomination winner. Though Adams had been working on his novel for some time,

[t]he Blaine horror had acquired an urgency for Adams that would be hard to exaggerate. With Blaine in mind, Adams re-shaped *Democracy* to meet three requirements. The novel had to be so baited as to attract large crowds of readers. It had to be so barbed that if published in November-December 1876 immediately after a [Republican Rutherford B.] Hayes victory, it would stop Hayes from choosing Blaine to be secretary of state. And it had to be so barbed that if it was withheld while [Democratic candidate Samuel] Tilden served as president but was published in the spring of 1880, it would destroy Blaine's chance of winning the Republican nomination for president in that year.⁵²

Hayes won the 1876 election. However, controversy surrounding the win made publishing *Democracy* unnecessary at that time as the fallout ensured “[Hayes] would thus be placed on his best behavior and could not choose Blaine as secretary of state.”⁵³ Blaine would cause other controversies in the meantime, but by 1880 he was again in the running for the presidential nomination after Hayes announced he would not seek a second term.

Adams published *Democracy* anonymously on April 1, 1880, two months before the Republican convention in Chicago. The novel's antagonist, Senator Ratcliffe, mirrored Blaine in many respects, emphasized by his ambition and corruption. The novel's theme centered on the importance of preventing Ratcliffe's ascendancy to the Presidency. Although the Ratcliffe character could be associated with persons other than Blaine,⁵⁴ Blaine cut ties with the book's suspected authors soon after its publication.⁵⁵ He also embarked on a quest to find out who was behind the book, and at one point pinned authorship on Adams's wife Clover.⁵⁶ The book was a “publisher's bonanza”⁵⁷ and played

a role in forcing Blaine to end his candidacy and support the nomination of James A. Garfield.⁵⁸ Blaine was secretary of state under Garfield and won the Republican presidential nomination in 1884, but never won the Presidency.

Commentators understand that anonymity was necessary for Adams to provide such a biting critique of Blaine: “The men and women he witheringly depicted in his novel, Adams knew, were not well disguised. So it was all the more important that he himself should be.”⁵⁹ Not only did Adams protect himself from retaliation, but he elevated the impact of his work. “Adams kept his authorship secret for a reason relating to the novel's power. Once the novel was published, its anonymous author all by himself would have . . . influence . . . and the author would continue to have influence as long as the public remained unsure about the authorship.”⁶⁰ The public only learned the authorship of *Democracy* long after Blaine's death, thirty-five years after its publication.⁶¹ In addition to avoiding Blaine's powerful influence and protecting his career as a historian, Adams could rest assured that *Democracy's* message spoke for itself.

American history offers many examples of the value and impact of anonymous political speech—whether published in a pamphlet like *The Monster of Monsters*, a series of articles like *The Federalist Papers*, or a full-length novel like *Democracy*. Anonymity serves several interests for free speech, but its widespread presence is equally notable. Indeed, that so many Americans have opted to speak about politics anonymously indicates it is an accepted practice, and one that continues today.

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D. ANONYMITY TODAY

While rigorous debate continues over the propriety of anonymous speech in the political sphere, its use continues where it is available. American media—television, radio, and newspaper—rely on anonymous sources, while on the Internet anonymous speech is often more prevalent than named authorship.

Although reporters usually identify themselves as authors of articles and editorial boards are easily identified in newspapers, both editorials and articles utilize anonymous opinions, especially in political reporting.⁶² The use of anonymous sources remains a hotly debated topic,⁶³ but there is no serious effort to ban the practice. Indeed, the folly of such an effort is apparent: reporters exposed the most notorious political scandal of the 20th Century, Watergate, with the help of the famous anonymous source, Deep Throat, whose true identity was not revealed until 2005—more than 30 years after Richard Nixon's resignation.⁶⁴ The interest of protecting oneself while speaking truth to—or simply

about—those in power remains as strong today as in generations past. Ironically, however, the Watergate scandal played a large role in influencing the creation of the Federal Election Commission,⁶⁵ which began enforcing campaign finance disclosure in earnest, cutting off many forms of anonymous political speech.

While institutional media utilizes anonymous sources, the best example of direct anonymous political speech occurs every second on the Internet in chat rooms, message boards, and social media. Internet anonymity is afforded a great deal of protection.⁶⁶ Unlike traditional political speech, anonymity is a presumed facet of free speech on the Internet.⁶⁷ Internet speech is often of questionable value, but its prevalence cannot be denied.

E. A CALL TO REFORM

History and the founding of the American Republic show that protecting political privacy serves important goals related to self-government. Today, judicial protection of political privacy is waning, with courts upholding requests for anonymity in only the direst circumstances.⁶⁸ Due to the development of precedent here, only speakers who favor persecuted causes—such as the Socialist Party—or who can show evidence of serious harassment—such as the National Association for the Advancement of Colored People (“NAACP”)—will enjoy anonymity.⁶⁹ However, speakers who reflect more mainstream views, such as center-right coalitions, must suffer the full application of campaign finance laws and surrender their political privacy. The result of this doctrine is to treat political privacy as a privilege for only the most outlandish voices or for groups who have suffered severe injuries.

The authors of this article advocate treating the First Amendment in a more just, uniform, and predictable manner. For political privacy to be meaningful and to serve its historical function, it must be recognized for any speaker desiring anonymity. This requires the courts to improve precedent such that Rotarians, Socialists, and Audubon Society members alike may embrace it. It requires that citizens need not risk being threatened or injured just to speak the way Hamilton, Madison, and Jay did. Instead, courts must invert existing doctrine to realize that anonymity is not a special privilege afforded to some under the First Amendment, but rather an integral part of its guarantees. This requires adherence to one central principle—that people are capable of self-government and possess the ability to contribute to political dialogue and assess information communicated to them. Anything less is a disservice to our most profound national liberty, free speech.

CONCLUSION

From *The Federalist Papers* to *Democracy* to modern Internet and press practices, the impact of anonymous speech is clear. The value of speech can greatly increase when the message is re-

moved from the speaker. Furthermore, speakers often have a legitimate interest in shielding their identities from those in power and from their neighbors. These benefits of anonymous political speech must not be dismissed when considering campaign finance laws that abridge—or entirely restrict—anonymity. ■

ENDNOTES

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¹ U.S. CONST. amend. I.

² See BLACK'S LAW DICTIONARY 106 (9th ed. 2009).

³ See 2 U.S.C. § 431(4).

⁴ See 2 U.S.C. § 434.

⁵ See *Bailey v. Maine Comm'n on Gov't Ethics and Election Practices*, 900 F. Supp. 2d 75, 88–93 (D. Me. Sept. 30, 2012).

⁶ Trevor Potter, president of the Campaign Legal Center, recently dismissed Justice Scalia's concern that “This campaign finance law is so intricate that I can't figure it out.” Trevor Potter, *The Supreme Court needs to get smarter about politics*, WASH. POST (Oct. 11, 2013), available at http://www.washingtonpost.com/opinions/the-supreme-court-needs-to-get-smarter-about-politics/2013/10/11/806c9c44-31b7-11e3-8627-5d7de0a046b_story.html.

⁷ See, e.g., Ryan J. Reilly, *Eschoo: Chamber Having 'Sissy Fit' Over Campaign Disclosure*, TPM MUCKRAKER (June 3, 2011, 1:20 PM), http://tpmmuckraker.talkingpointsmemo.com/2011/06/eschoo_chamber_having_sissy_fit_over_campaign_discl.php; Gadi Ben-Yehuda, *SCOTUS: US Politics No Place for Sissies*, HUFFPOST POLITICS (June 25, 2010, 4:03 PM) http://www.huffingtonpost.com/gadi-benyehuda/scotus-us-politics-no-pla_b_625221.html (last visited Nov. 26, 2013).

⁸ This “institution will be based on the illimitable freedom of the human mind. for [sic] here we are not afraid to follow truth wherever it may lead, nor to tolerate any error so long as reason is left free to combat it.” Letter from Thomas Jefferson to William Roscoe (Dec. 27, 1820), available at <http://www.loc.gov/exhibits/jefferson/75.html>.

⁹ See, e.g., 2 U.S.C. § 434.

¹⁰ See, e.g., *An American Citizen I*, INDEPENDENT GAZETTEER, Sept. 26, 1787, reprinted in 1 THE DEBATE ON THE CONSTITUTION 20–24 (Bernard Bailyn, ed., 1993) [hereinafter DEBATE 1].

¹¹ See, e.g., “Agrippa” III, MASS. GAZETTE, Nov. 30, 1787, reprinted in DEBATE 1 at 443–45.

¹² See, e.g., “Cato” I, N.Y. JOURNAL, Sept. 27, 1787, reprinted in DEBATE 1 at 31–33.

¹³ See, e.g., *Reply to Elbridge Gerry: “A Landholder” IV*, CONNECTICUT COURANT, Nov. 26, 1787, reprinted in DEBATE 1 at 234–38.

¹⁴ See, e.g., *Reply to Mason's “Objections”: “Civis Rusticus,” VA. IND. CHRON.*, Jan. 30, 1788, reprinted in DEBATE 1 at 353–62.

¹⁵ See, e.g., “Civis” to the Citizens of South Carolina, COLUMBIAN HERALD, Feb. 4, 1788, reprinted in 2 THE DEBATE ON THE CONSTITUTION 147–54 (Bernard Bailyn, ed., 1993) [hereinafter DEBATE 2].

¹⁶ See, e.g., “A Freeman” to the Freeholders and Freemen of Rhode Island, NEWPORT HERALD, March 20, 1788, reprinted in DEBATE 2 at 368–71.

¹⁷ See generally THE FEDERALIST. John Jay authored only five articles, limiting his participation after coming down with rheumatoid arthritis. RICHARD BROOKHISER, JAMES MADISON 63 (2011).

¹⁸ BROOKHISER, *supra* note 17, at 64.

¹⁹ “Printed in only a dozen papers outside of New York, [The Federalist's] larger influence was spotty.” RON CHERNOW, ALEXANDER HAMILTON 261 (2004).

²⁰ JOHN C. MILLER, ALEXANDER HAMILTON: PORTRAIT IN PARADOX 189 (1959). See also CHERNOW, *supra* note 19, at 249 (“Many people knew that Hamilton, Madison, and Jay were the authors, but the trio proclaimed their authorship to only a chosen few and then mostly after the first bound volume was published in March 1788.” (emphasis added)).

²¹ See, e.g., FREDERICK MOSTELLER & DAVID L. WALLACE, INFERENCE AND DISPUTED AUTHORSHIP: THE FEDERALIST (1964).

²² CHERNOW, *supra* note 19, at 245 (emphasis added).

²³ CHERNOW, *supra* note 19, at 712 (citation omitted).

²⁴ CHERNOW, *supra* note 19, at 714 (citation omitted).

²⁵ See generally CHERNOW, *supra* note 19, at 219–42.



²⁶ See, e.g., David Zucker- John Kerry Flip Flop Ad, YouTube (Nov. 21, 2013), <http://www.youtube.com/watch?v=oThH-MNCsYw>.

²⁷ "Not only was Madison a Southerner and therefore unable to approach the Constitution from the point of view of a New Yorker, but he also contributed a broad philosophical insight that helped to elevate these essays far above the polemical writings of the day." JOHN C. MILLER, ALEXANDER HAMILTON: PORTRAIT IN PARADOX 189 (1959).

²⁸ In Virginia *The Federalist* was distributed in bound form: "Madison sent hundreds of copies to Virginia delegates, including John Marshall. *The Federalist's* influence was to be especially critical in New York and Virginia, two large states indispensable to the union's long-term viability." CHERNOW, *supra* note 19, at 261.

²⁹ RICHARD BROOKHISER, ALEXANDER HAMILTON, AMERICAN 72 (1999). See also MILLER, *supra* note 27, at 209-10.

³⁰ CHERNOW, *supra* note 19, at 262.

³¹ [I]n mid-July, the two sides remained unalterably apart . . . Days later, Melancton Smith finally broke the deadlock when he endorsed the Constitution if Congress would promise to consider some amendments. Paying indirect tribute to Hamilton, Smith credited "the reasonings of gentlemen" on the other side for his changed vote. On July 26, Smith and a dozen other antifederalists switched their votes to favor the Constitution, producing a wafer-thin majority . . . the smallest margin of victory at any state convention . . .

CHERNOW, *supra* note 19, at 268. Melancton Smith was "the most capable debater on the [antifederalist] side." BROOKHISER, *supra* note 17, at 73.

³² MILLER, *supra* note 27, at 207.

³³ ISAIAH THOMAS, THE HISTORY OF PRINTING IN AMERICA 133-34 (1874).

³⁴ *Id.* at 129-32.

³⁵ LEONARD WILLIAMS LEVY, EMERGENCE OF A FREE PRESS 30 (1985).

³⁶ Frederick S. Allis, Jr., *Boston and the Alien Sedition Laws*, in PROCEEDINGS OF THE BOSTONIAN SOCIETY 25-51 (1951).

³⁷ LOUIS EDWARD INGELHART, PRESS AND SPEECH, FREEDOMS IN AMERICA, 1619-1995 80-82 (1995).

³⁸ Some who publicly pressed for robust First Amendment protections also helped generate speech-suppressing laws like the Sedition Acts. JAMES GRANT, JOHN ADAMS: PARTY OF ONE 405-06 (2005) ("John Adams had not asked Congress to pass the Sedition Act, but he willingly signed it, believing, along with virtually every other Federalist, in the doctrine of 'seditious libel.' That is, he believed that the government could be criminally assaulted with words."). Human nature and hypocrisy aside, the overall understanding of the Founding Era was in favor of robust speech as a means to keep government in check. Eugene Volokh, *Freedom for the Press as an Industry, or for the Press as a Technology? From the Framing to Today*, 160 U. PA. L. REV. 459, 465-68 (2012) (Citing numerous sources encouraging protection of a free press, many based on the freedom to criticize government).

³⁹ First Nat'l Bank of Bos. v. Bellotti, 435 U.S. 765, 800-01 (1978) (Burger, C.J., concurring).

⁴⁰ ROBERT J. WAGMAN, THE FIRST AMENDMENT BOOK 28 (1991).

⁴¹ INGELHART, *supra* note 37, at 47.

⁴² BERNARD BAILYN, THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION 56 (1973).

⁴³ The Sedition Act imposed a prison sentence of up to two years against "any person [who] shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States . . ." 1 Stat. § 596-97 (1798).

⁴⁴ GRANT, *supra* note 38, at 405.

⁴⁵ *Id.*

⁴⁶ Roth v. United States, 354 U.S. 476, 484 (1957).

⁴⁷ William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 491 (1977).

⁴⁸ HENRY ADAMS, DEMOCRACY: AN AMERICAN NOVEL (1880), reprinted in HENRY ADAMS: NOVELS, MONT SAINT MICHEL, THE EDUCATION (1983).

⁴⁹ EDWARD CHALFANT, BETTER IN DARKNESS: A BIOGRAPHY OF HENRY ADAMS, HIS SECOND LIFE 1862-1891 329 (1994).

⁵⁰ *Id.*

⁵¹ *Id.* at 289.

⁵² *Id.* at 329.

⁵³ *Id.* at 334.

⁵⁴ Some argue that Blaine cannot be easily associated with Senator Ratcliffe, "[t]he parallels are not very close." Gary L. Wills, *Henry Adams: The Historian as Novelist* 579, 597 (2003), available at http://tannerlectures.utah.edu/_documents/a-to-z/w/wills_2003.pdf. Nevertheless, James Blaine certainly considered the parallels close enough.

⁵⁵ CHALFANT, *supra* note 49, at 411.

⁵⁶ *Id.* at 452.

⁵⁷ *Id.* at 399.

⁵⁸ *Id.* at 399-400.

⁵⁹ David Greenberg, *Democracy: Why it's the only lasting anonymous Washington novel*, SLATE (Apr. 20, 2011, 2:28 PM), http://www.slate.com/articles/news_and_politics/history_lesson/2011/04/democracy.html (last visited Nov. 26, 2013). Greenberg also offers praise for the timelessness of *Democracy*, contrasting it to other novels that critique American democracy: "The appeal of most Washington novels rests in their resonance with current events. After Joe Klein was the author of the *Primary Colors*, popular interest in reading the book plummeted. Klein's sequel, *The Running Mate*, written under his own name, drew little attention. Most Washington novels are not literature but punditry by other means." *Id.*

⁶⁰ CHALFANT, *supra* note 49, at 328-29.

⁶¹ Greenberg, *supra* note 59.

⁶² See, e.g., Amy Goldstein, Lena H. Sun & Sandhya Somashekhar, *Rush of interest continues on insurance Web sites*, WASH. POST (Oct. 2, 2013), available at http://www.washingtonpost.com/national/health-science/obamacare-site-goes-live-with-some-glitches/2013/10/01/380a4300-2a9d-11e3-8ade-af23cda135e_print.html ("Very, very few people that we're aware of have enrolled in the federal exchange," said one insurance industry official, who like many in the industry, spoke on the condition of anonymity out of concern for possibly offending the Obama administration."). See also Sarah Abrams, *Woodward and Bernstein Defend Anonymous Sources*, Harvard Kennedy School (Dec. 5, 2005), available at <http://www.hks.harvard.edu/news-events/news/articles/woodwardand-berstein-defend-anonymous-sources>.

⁶³ See, e.g., *Politico's Martin Defends Use of Unnamed Sources*, REAL CLEAR POLITICS (Aug. 19, 2012), http://www.realclearpolitics.com/video/2012/08/19/politicos_martin_defends_use_of_unnamed_sources.html (last visited Nov. 26, 2013).

⁶⁴ David Von Drehle, *FBI's No. 2 Was 'Deep Throat': Mark Felt Ends 30-Year Mystery of The Post's Watergate Source*, WASH. POST (June 1, 2005), available at http://www.washingtonpost.com/politics/fbis-no-2-was-deep-throat-mark-felt-ends-30-year-mystery-of-the-posts-watergate-source/2012/06/04/gJQAwseRIV_story.html.

⁶⁵ John W. Dean, *Watergate's Unanswered Questions: 40 Years of Hindsight*, 16 CHAPMAN L. REV. 1, 6 (2012) ("Watergate caused Washington to reexamine the way it did business, and that, in turn, provoked many reforms. . . . Congress adopted a number of new campaign finance and reporting laws and created the Federal Elections [sic] Commission.").

⁶⁶ See, e.g., Matthew Mazzotta, Note, *Balancing Act: Finding Consensus on Standards for Unmasking Anonymous Internet Speakers*, 51 B.C. L. REV. 833 (2010).

⁶⁷ Even the Campaign Legal Center, which vigorously supports campaign finance laws, once supported unfettered Internet speech. See, e.g., Comments on Notice 2005-10, Campaign Legal Center 15 (2005), http://www.campaignlegalcenter.org/attachments/FEC_PROCEEDINGS/1381.pdf ("This rule would make clear, appropriately so, that individuals engaging in unfettered political discourse over the Internet using their own computer facilities (or those publicly available) would not be subject to regulation under the campaign finance laws . . .").

⁶⁸ See *Brown v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87 (1982).

⁶⁹ See *NAACP v. Alabama*, 357 U.S. 449, 460 (1958).

