

Encryption in the US: The Founding Fathers Frequently Used it ... and it Helped Win the Revolutionary War

By [Washington's Blog](#)

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Spying v. Privacy: An Ancient Battle

The battle between the NSA, FBI and other government agencies who are pushing to outlaw encryption and those who want privacy is the same battle fought by the Founding Fathers more than 200 years ago.

After all, the [NSA is doing to modern Americans what King George did to Colonial America](#) ... which was [one of the main reasons the Founders launched](#) the Revolution. And see [this](#).

And Benjamin Franklin was called a traitor (like Edward Snowden) for [blowing the whistle on the government's actions](#).

Encryption During the Revolution

While encryption might seem like a new affair, it is actually very old school ... and something which the Founding Fathers extensively used.

John Fraser [noted](#) in 1997 in the The Virginia Journal of Law and Technology (I've bolded names of Founding Fathers):

The generation of actors that framed the Constitution and the Bill of Rights were sophisticated users of secret communications, and ... they used secret communications to protect and advance the political objectives that they most valued. Encryption was speech.

From the beginnings of the American Revolution in 1775 until the adoption of the United States Constitution, Americans used codes, ciphers and other secret writings to foment, support, and carry to completion a rebellion against the British government. In the words of one author, "America was born of revolutionary conspiracy." Moreover, "[a]s rebels and conspirators, the young nation's leaders ... turned to codes and ciphers in an effort to preserve the confidentiality of their communications." Americans also continued to use secret communications methods for purely private correspondence, and for political correspondence where a restricted audience was desired. The leading lights of the Revolution and the founding generation were frequent users of secret communications during the Revolution.

George Washington, as commander of the Continental Army, was forced to

deal with encryption and espionage issues shortly after taking command of the Army when it was conducting a siege of the British forces in Boston.... Washington also was forced, through the circumstances of the War, to deal with encryption and decryption issues on a constant basis.

John and Abigail Adams, his wife, used a cipher provided by James Lovell for family correspondence while John Adams was away from home.

During the Revolution, [Thomas] Jefferson frequently made recourse to encrypted communications to protect his private thoughts, to convey confidential information, and to protect valuable political insights from prying eyes.

James Monroe ... took a cipher with him to Paris in 1803, and used the cipher to communicate with Jefferson regarding the progress of negotiations concerning the Louisiana Purchase. A number of the codes that he used in communicating with Jefferson and others have survived.

James Madison was ... a frequent and extensive user of secret communications during the Revolution, utilizing a number of different ciphers for private correspondence, correspondence with state officials in Virginia, and correspondence with fellow actors in the Revolution.

John Jay ... used a secret code as early as October 1779, and he used a secret code to correspond, evidently on personal matters, while on government business in Europe, and was required to use a cipher for all significant diplomatic correspondence. Jay was instrumental early in the Revolution in obtaining "secret ink" from his brother James in London.

The "nomenclator" [i.e. cipher] used by [Benjamin] Harrison for correspondence with Madison and others has survived in the Virginia records, and much of the correspondence has been deciphered.

Edmund Randolph ... and Madison conducted an extensive encrypted correspondence on private matters over a number of years.

William Lee ... was the brother of Arthur and Richard Henry Lee, discussed infra. For correspondence between the brothers, a dictionary code was used.

While in Europe, Arthur Lee's encrypted correspondence and reports were repeatedly stolen or reviewed in transit by British espionage officers.

Richard Henry Lee, the third Lee brother in this paper, was a diplomat, Member of the Continental Congress, President of the Continental Congress, and United States Senator. The Lee brothers' correspondence and their efforts to maintain secrecy are good examples of the wide knowledge and practical use of encryption from the Revolutionary era. It should also be noted that the Lee brothers' enciphered correspondence remained unbroken until the 1920s, due to the complexity of the cipher.

Benjamin Franklin was not only the printer of the 1748 text on ciphers cited above, but was also a prominent diplomat, supporter of the Revolution, and inventor of a “homophonic substitution cypher” while representing the United States in Paris in 1781. Franklin worked with a number of other codes and ciphers in his international correspondence on behalf of the Continental Congress, and a number of examples of his coded correspondence have survived.

One of [Robert R.] Livingston’s contributions to the Revolutionary cause was a 1700-part code that he designed for the Foreign Affairs Department in 1781. The same code was used for private correspondence as well as government business. Livingston sent George Washington a 1017-part code in 1782.... While Livingston was in Paris on government business in 1802, Jefferson sent him a private letter and a cipher that could be used for their correspondence.

James Lovell ... designed codes and ciphers for the Continental Congress and for use in private correspondence by members and their families. David Kahn refers to Lovell as the “Father of American Cryptanalysis.” One of Lovell’s codes was used by Madison and Randolph to replace a code that was compromised by a mail robbery.

John Laurens used the codes supplied to him by Robert Livingston while he was in France.

Numerous other examples of the use of ciphers and codes during and shortly after the Revolution could be provided, but the materials cited so far should amply demonstrate that the Revolutionary era was a time of intense use of ciphers and codes by the Founders.

Encryption After the Revolution

Fraser shows that the Founding Fathers continued their use of encrypted communication after the Revolutionary War:

After the adoption of the Constitution, and before the ratification of the Bill of Rights, codes, ciphers and other forms of secret communication were used by the Founders to speak freely only to those people they wanted to address. For example, in March 1789, after the Constitution was ratified and before the new President took office, George Washington corresponded with Henry Innes on the topic of the threatened secession of Kentucky from the newly-formed federal Union. Washington promised to send Innes a “cypher” for their correspondence, and enjoined Innes to use it to cover their concerted efforts to defeat the secessionists.

George Washington and the Marquis de Lafayette, a French nobleman and Brigadier General of the Continental Army under Washington, used a cipher for correspondence while LaFayette was in Paris in 1785.

Another example from the period prior to the adoption of the Bill of Rights is compelling evidence of the importance of codes and ciphers to the Founders. While Jefferson was in Paris representing the new Republic, James Madison was a member of the House of Representatives. In the First Session of the First Congress, Madison introduced legislation that, when ratified by the states, became the Bill of Rights. The correspondence between Jefferson and Madison from the period covering the introduction and the Congressional debates over the Bill of Rights is partially enciphered. It is revealing that Jefferson's August 28, 1789 letter to Madison in which he comments on the proposed First Amendment is partially enciphered, and that the comments about the text that became the First Amendment are contained in a paragraph immediately following a partially enciphered paragraph.

Prior to the adoption of the Bill of Rights, Madison and Jefferson also used a 1700-word code for confidential discussion of sensitive personal and political issues.

From 1791 through the patenting of Samuel Morse's telegraph and beyond there has been widespread and common use of codes, ciphers, and other modes of secret communication. Perhaps the most compelling example of continued use of secret modes of communication is provided by the correspondence of James Madison and Thomas Jefferson during the administration of John Adams, who served as President from 1793 to 1801.

There is evidence that Alexander Hamilton and his relatives and political associates used ciphers for secret communications at least between 1800 and 1803. On June 6, 1799, Hamilton's father-in-law General Philip Schuyler wrote to Hamilton promising to send him a "cypher" for their correspondence. Hamilton wrote to Rufus King on January 5, 1800, conveying some information and indicating that he would wait for a cipher before communicating other information.

Aaron Burr, a former Vice President, sent a "political code" to Congressman Edward Livingston in 1806, and Burr and his associates used secret, enciphered correspondence

Before taking office as President in 1801, Jefferson invented one of the most sophisticated cipher devices of the Nineteenth Century. It was a "cipher cylinder," and has been described as "far ahead of its time," and as a device that "would have withstood any cryptographic attack of those days."

"In the years after 1780, Jefferson, James Madison, James Monroe, and a covey of other political leaders in the United States often wrote in code in order to protect their personal views on tense domestic issues confronting the American nation.

The need for secrecy and confidential communications has continued throughout American history.

The Courts Have Always Treated Encryption As Lawful

Fraser notes that the courts have always treated encryption as legal:

The Constitution protects all forms or types of expression or communication that meet the following three-part test. Those modes of expression or communication are protected which (1) are historically demonstrated to have been in widespread use as of the adoption of the Bill of Rights; which (2) are shown to have been sanctioned in use by the Framers of the Constitution and the Bill of Rights; and which (3) are shown to have long continued in use. Those modes of expression or communication which meet this three-part test may not be prohibited to the people, and may only be regulated when they are abused to accomplish some otherwise illegal purpose.

The courts have not treated those persons who have used encryption, ciphers, and codes with any presumption of illegality.

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