

Kentucky 1798

19

SEDITION OR DISSENT



Driven by differences in policy, philosophy, and personality, American politics became formal party politics for the first time in the 1790s, with incendiary consequences. The "Federalists" lined up behind Alexander Hamilton's program: a significant national debt with higher taxes to pay the interest on it, a huge federally-chartered Bank of the United States, protective tariffs to foster manufacturing, and major federal transportation projects. Federalists, including both Washington and his successor as president, John Adams, wanted a more powerful federal judiciary and military. They were generally pro-British—and therefore anti-Revolutionary France—in foreign policy. And they distrusted, even feared, the impulses of the "populace" as opposed to the wealthy and well-educated, whom they assumed to be the country's natural leaders. Hamilton called the common people a "great beast." Other Federalists tended to agree.

All this generated much opposition, led by Vice-President Thomas Jefferson and his allies, the so-called Republicans or Democrats. Jefferson opposed nearly everything the Federalists stood for, and he was as suspicious of their "monarchical" intentions as they were of his irresponsible radicalism. The Jeffersonian press, urged on by Jefferson himself, was particularly aggressive in calling for "resistance" to the corrupt, pro-British, monarchical Federalist cabal. This mattered, since by 1800 there were over two hundred newspapers that together reached a third of the eligible voters. Meanwhile, a host of radical immigrants from England, Ireland, and France was now streaming into the country. Nearly all of them supported the hated Jefferson, heaped scorn on John Adams, and demanded American intervention on behalf of Revolutionary France, which Federalists thought would be a disaster.

In Federalist eyes, something clearly had to be done if the United States were to avoid the kind of bloody mob revolt that had convulsed France. In 1798 the Federalist-controlled Congress tripled the regular army to ten thousand men. In case of war, the army would automatically expand to fifty thousand, but the real target was potential radical mobs, not a foreign power. Even more ominously, the Federalists rammed

through Congress the Alien and Sedition Acts. The first authorized the president to expel, without proof, “dangerous” foreign residents; the second forbade anyone, even citizens, to “oppose any measure or measures of the United States” or bring the president “into contempt of disrepute.” The intent was clear. “It is patriotism,” according to a Federalist newspaper, “to write in favor of our government—it is sedition to write against it.” Within a few months four of the five largest Jeffersonian papers were under charges of sedition. By mid-1800, amid a hot presidential campaign, ten people had been convicted, including a sitting Vermont congressman.

Nothing else ever angered Thomas Jefferson so much. “I am unalterably opposed,” he had written, “to every form of tyranny over the mind of man,” and these acts surely smacked of tyranny. But it was not clear how to respond. The Federalists controlled all three branches of the central government, so neither constitutional checks and balances nor the Bill of Rights seemed reliable. Neither did elections, since if dissent was going to be suppressed how could there be free elections? The question of how to rule on problems of constitutionality had not yet been resolved in favor of the Supreme Court, so there seemed only one recourse—the states. Jefferson therefore drafted a resolution for the Kentucky legislature, which his supporters controlled. James Madison, his lieutenant, did the same in Virginia. The final portion of the Kentucky Resolutions, containing Jefferson’s essential arguments, follows below.

In a further show of resolve, the governors of Kentucky and Virginia mobilized their militia; entire units of young men carrying long rifles signed petitions denouncing this attack on freedom of expression. In the event, the elections went forward, and the backlash over the Alien and Sedition Acts helped make Jefferson president. One of his first actions was to persuade the new Democratic–Republican Congress to repeal them.

Questions to Consider. Why, according to the resolutions, did the Alien and Sedition Acts worry Jefferson so much? What common constitutional recourse did they threaten to prevent? Was Jefferson right to be so concerned? Are there any interests besides those of freedom of dissent that would justify this kind of states rights view? To what extent did the rhetoric of the Kentucky Resolutions resemble the rhetoric of, for example, James Otis and Tom Paine in the Revolutionary era? In 1798 Jefferson wrote: “Party division is necessary to induce each to watch & relate to the people the proceedings of the other. . . . A little patience and we shall see the reign of witches pass over and the people recovering their true sight.” What was Jefferson’s point here? Who were the “witches”?



The Kentucky Resolutions of 1798

THOMAS JEFFERSON

Resolved, That a committee of conference and correspondence be appointed . . . to communicate . . . to the legislatures of the several States; to assure them this commonwealth continues in the same esteem of their friendship and union which it has manifested from that moment at which a common danger first suggested a common union: that it considers union, for specified national purposes, and particularly to those specified in their late federal compact, to be friendly to the peace, happiness and prosperity of all the States; that faithful to that compact, according to the plain intent and meaning in which it was understood and acceded to by the several parties, it is sincerely anxious for its preservation: that it does also believe, that to take from the States all the powers of self-government and transfer them to a general and consolidated government . . . is not for the peace, happiness or prosperity of these States. . . .

. . . And that therefore this commonwealth is determined . . . to submit to undelegated, and consequently unlimited powers in no man, or body of men on earth: that in cases of an abuse of the delegated powers, the members of the General Government, being chosen by the people, a change by the people would be the constitutional remedy; but, where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy: that every State has a natural right in cases not within the compact . . . to nullify of their own authority all assumptions of power by others within their limits: that without this right, they would be under the dominion, absolute and unlimited, of whatsoever might exercise this right of judgment for them: that nevertheless, this commonwealth, from motives of regard and respect for its co-States, has wished to communicate with them on the subject: that with them alone it is proper to communicate, they alone being parties to the compact, and solely authorized to judge in the last resort of the powers exercised under it, Congress being not a party, but merely the creature of the compact. . . .

That if the acts before specified should stand, these conclusions would flow from them:

- That the General Government may place any act they think proper on the list of crimes, and punish it themselves whether enumerated or not enumerated by the Constitution as cognizable by them.
- That they may transfer its cognizance to the President, or any other

person, who may himself be the accuser, counsel, judge and jury, whose *suspensions* may be the evidence, his *order* the sentence, his *officer* the executioner, and his breast the sole record of the transaction.

- That a very numerous and valuable description of the inhabitants of these States being, by this precedent, reduced, as outlaws, to the absolute dominion of one man, and the barrier of the Constitution thus swept away from us all, no rampart now remains against the passions and the powers of a majority in Congress to protect from a like exportation, or other more grievous punishment, the minority of the same body, the legislatures, judges, governors, and counsellors of the States, nor their other peaceable inhabitants, who may venture to reclaim the constitutional rights and liberties of the States and people, or who for other causes, good or bad, may be obnoxious to the views, or marked by the suspicions of the President, or be thought dangerous to his or their election, or other interests, public or personal.
- That the friendless alien has indeed been selected as the safest subject of a first experiment; but the citizen will soon follow, or rather, has already followed, for already has a sedition act marked him as its prey.
- That these and successive acts of the same character, unless arrested at the threshold, necessarily drive these States into revolution and blood, and will furnish new calumnies against republican government, and new pretexts for those who wish it to be believed that man cannot be governed but by a rod of iron.
- That it would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights: that confidence is everywhere the parent of despotism—free government is founded in jealousy, and not in confidence; it is jealousy and not confidence which prescribes limited constitutions, to bind down those whom we are obliged to trust with power: our Constitution has accordingly fixed the limits to which, and no further, our confidence may go.
- And let the honest advocate of confidence read the alien and sedition acts, and say if the Constitution has not been wise in fixing limits to the government it created, and whether we should be wise in destroying those limits. Let him say what the government is, if it be not a tyranny, which the men of our choice have conferred on our President, and the President of our choice has assented to, and accepted over the friendly strangers to whom the mild spirit of our country and its laws have pledged hospitality and protection: that the men of our choice have more respected the bare *suspensions* of the President, than the solid right of innocence, the claims of justification, the sacred force of truth, and the forms and substance of law and justice. In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.