

Chapter 7

The Sedition Act and the Virginia and Kentucky Resolutions

In 1795, the U.S. Senate ratified the Jay Treaty by a vote of 20 to 10. All twenty Federalists in the Senate voted for the Treaty; all ten anti-Federalists voted against it. As the Federalists predicted, the treaty improved relations with Great Britain. Trade was restored, and war avoided. As the Republicans had warned, the treaty led to a complete breakdown in relations with France.

The Jay Treaty so angered France that this former U.S. ally began a policy of interfering in U.S. affairs. The French began by demanding that President Washington retire from politics and be replaced by someone more favorable to French interests. The French then expressed their displeasure by attacking and capturing some 300 American ships.

Unrelated to French pressure, President Washington retired from politics when his second term in office ended in 1797. In his farewell address, Washington warned the nation “to steer clear of permanent alliances, with any portion of the foreign world,” asking Americans not to “entangle our peace and prosperity in the toils of European ambition.” He also spoke of the “baneful effects of the spirit of party,” which he warned, “serves always to distract the public council and enfeeble the public administration.”¹⁹

Washington was succeeded by John Adams, who was at least as hostile to France as the French were to the United States. The French response to Adams’s election was to expel Adams’s ambassador to France. Meanwhile, French leaders continued to spread their revolutionary doctrines, and French armies went on the warpath, attacking Austria, Prussia, and several Italian city-states. They made plans to cross the channel and invade Great Britain.

The XYZ Affair and Preparations for War

Hoping to avoid a war with France, President Adams appointed a special delegation of three well-known Americans, including a Republican, to negotiate with the French. These diplomats, Elbridge Gerry (the Republican), Charles C. Pinckney, and John Marshall, left the United States in November 1797. When they arrived in Paris many weeks later they found the French diplomats were not ready to meet them. Instead, they were informed by French agents identified only as X, Y, and Z that they would have to pay for the privilege of meeting French Foreign Minister Talleyrand. The price was a bribe of \$250,000 and a loan to France of \$12,000,000. The dumbfounded Americans were also told that the U.S. delegates had to denounce an alleged insult against France made by President Adams.

While Elbridge Gerry remained in France hoping for a French change of heart, Marshall and Pinckney returned to America. When the full extent of this diplomatic insult became known throughout the country, Americans were infuriated. “Millions for defense, but not one cent for Tribute,” became the watchword of American patriots. War with France suddenly seemed all but inevitable. Rumors abounded that the French were preparing for an invasion of the United States with an army of 200,000. Their plans,

¹⁹Quoted in Richard Hofstadter, *Great Issues in American History* (Vintage Books, New York, 1958), pp. 217-18.

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it was said, called for a slave rebellion in the South, and with the aid of a “party of mad Americans” a plot to burn Philadelphia to the ground, and to capture the West.

Congress began making preparations for this oncoming war by committing \$250,000 to defend harbors, build ships, and raise an army of 10,000. Adams convinced George Washington to come out of retirement to lead the army, and Major-General Alexander Hamilton needed no Presidential encouragement to begin recruiting and equipping soldiers to do the actual fighting.

The Sedition Act

In the midst of this war scare, Federalist leaders were under constant verbal attack. While in office even President Washington had not been immune from slander; among other affronts he had been called the “scourge and misfortune of our country.” President Adams was roasted as “the blasted tyrant of America” and the “foremost in whatever is detestable.” This violent criticism of the U.S. president at a time of national emergency prompted Congressman Allen of Connecticut to warn:

Let gentlemen look at certain papers, and ask themselves whether an unwarranted and dangerous combination does not exist to overturn the Government by publishing the most shameless falsehoods against Representatives of the people.²⁰

Under pressure from Allen and others, the Federalist Congress passed a bill entitled, “an act for the punishment of certain crimes against the United States.” More popularly called the Sedition Act, it made the following acts illegal:

Write, print, or publish any false, scandalous, and (emphasis added) malicious statements against the government, Congress and the President of the United States, with the intent to bring them into contempt or disrepute.

But it allowed:

Any person prosecuted under this act to give as evidence in his defense, the truth of the matter contained in the publication.*

Arguments for and Against the Sedition Act

Those opposing the Sedition Act claimed that it was a direct violation of the First Amendment to the Constitution, which stated:

Congress shall make no law abridging freedom of speech or of the press.

In defense of this Act, Congressman Allen argued:

Am I free to falsely call you a thief, a murderer, a person who does not believe in God? The freedom of press and opinions was never understood to give the right of printing lies and slanders, nor of calling for revolution and slaughter.

²⁰*Annals of Congress*, 5th Congress, 2nd Session, pp. 2093-94.

*The Naturalization and Alien Acts were passed at the same time; the former extended the period before an immigrant could become a citizen from five to fourteen years and the latter gave the President the power to expel foreigners by executive decree. Most immigrants voted anti-Federalist.

Are we bound hand and foot that we must watch these deadly attacks on our liberty? God deliver us from the liberty of vomiting on the public, floods of lies and hatred to everything we hold dear. If any gentleman doubts the effects of such freedom, let me direct his attention to France; it has made slaves of thirty millions of men.²¹

An equally strong argument against the Sedition Act was made by Congressman Albert Gallatin of Pennsylvania:

This bill makes anyone speaking or writing against the present Administration an enemy of the Constitution. If you put the press under any such restraint, you thus deprive the people of the means of getting the facts about their government and make the right of free elections worthless. This bill must be considered only as a weapon to be used by the party in power in order to keep their authority and present place.²²

Despite Gallatin's warnings, the House of Representatives and Senate passed the Sedition Act. It was to last a little under two years, expiring the day before the next president was inaugurated.

Ragged Matt, The Democrat

One intended target of the Sedition Act was Mathew Lyons of Vermont. Lyons had earned the hatred of Federalists for spitting in the face of Federalist Congressman Roger Griswold, who had criticized Lyons's military record during the Revolution. Lyons had been attacked in a Federalist newspaper. He was called a "wild beast whose pelt resembles a wolf, is carnivorous, but has never been detected in having attacked a man, but reports say he will beat women."

Lyons's legal troubles started only after passage of the Sedition Act. Among other documents he had written was the following strong attack on President Adams:

In this man we see every consideration of the public good swallowed up in a continual grasp for power, and an increasing thirst for ridiculous dress, foolish praise, and selfish greed.²³

At another time, Lyons published the following letter, written by a Frenchman, as a campaign document:

After hearing what insults President Adams had made of France, we [the French people] wondered why America's Congress had not ordered him sent to a mad house. Instead, the Senate repeated his speech with more slavishness than ever King George the Third experienced from Parliament.²⁴

²¹ *Annals*, pp. 2097-98.

²² *Annals*, p. 2110.

²³ Quoted in James Smith, *Freedom's Fetters* (Cornell University Press: Ithaca, NY, 1956), p. 226.

²⁴ Quoted in Francis Wharton, *State Trials of the United States During the Administration of Washington and Adams*, (Philadelphia, PA: 1849), p. 334.

Mathew Lyons was soon indicted for “knowingly and maliciously” publishing certain false, scandalous, and seditious writings; he was subsequently brought to trial for violating the Sedition Act.

The Trial of Ragged Matt

Mathew Lyons served as his own lawyer at his trial. He gave a two and one-half hour speech in his defense. In it he claimed his writings were not published with “bad intent”; what he said was true, and the Sedition Act was unconstitutional. He presented no other evidence than a cross-examination of the presiding judge, William Paterson of New Jersey. Lyons asked Paterson if he had dined with Adams and observed ridiculous pomp. Paterson replied that, on the contrary, he had seen “a great deal of plainness and simplicity.”

The prosecution in the case argued that the Sedition Act was constitutional, but Judge Paterson told the jury it was not competent to rule on the question of constitutionality. The prosecution also claimed Lyons’s statements were obviously false, malicious, and intended to harm the reputation of President Adams. Judge Paterson informed the jury that it had to determine whether Lyons had proved his statements true and, if not, whether his lies were malicious with the intent to defame.

Altogether, 15 individuals were prosecuted under the Sedition Act. They were all Republicans, political opponents of the Federalist president and his supporters in Congress and the judiciary. Ten, including the editors of three leading Republican newspapers and Mathew Lyons, were found guilty. Lyons served four months in jail, winning re-election to Congress while in prison. Since the presidential election was decided by the House of Representatives because no candidate had the majority of electoral votes, Lyons had the satisfaction of casting the deciding vote for President Thomas Jefferson! The Sedition Act expired on March 3, 1801, the day before Thomas Jefferson was inaugurated to succeed John Adams as president of the United States; Jefferson made no effort to revive the act.

Suggested Student Exercises:

1. What events led up to passage of the Alien and Sedition Acts?
2. Does it seem to you that in time of national emergency, such as the one described in this chapter, that some limits must be placed on freedom of speech? Do you think the Sedition Act, with its emphasis on false, scandalous, **and** malicious writings or speeches against members of the government, went too far in the direction of limiting freedom of speech guarantees in the First Amendment to the Constitution.
3. Do you think that Mathew Lyons should be convicted under the Sedition Act, or do you think his case just shows that the Federalists were out to prevent political opponents from expressing their views?



Matt Lyons "duking it out" with Roger Griswold

Epilogue: The Virginia and Kentucky Resolutions

It might be said that in politics, as in physics, every action has an equal and opposite reaction. The Republicans reacted to the Sedition Act by introducing and passing resolutions in the state legislatures of Virginia and Kentucky. The authors of these famous resolutions were none other than James Madison and Thomas Jefferson.

Both resolutions argued that the Sedition Act was unconstitutional. They pointed out that Amendment I to the Constitution states that "Congress should make no law...abridging the freedom of speech or the press." Jefferson went further than Madison, implying that individual states could declare acts of Congress null and void. The Kentucky Resolution stated that the Sedition Act, which does abridge the freedom of the press, is not law, but is altogether void and of no effect. In writing this resolution, Thomas Jefferson suggested that the states, which he said wrote the Constitution, could decide what laws the federal government had the right to make and enforce. Having called the Sedition Act unconstitutional, he invited other state legislatures to follow Kentucky's example.

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I. Resolved, that the several States composing the United States of America, are not united on the principle of unlimited submission to their general government; but that by compact under the style and title of a Constitution for the United States and of amendments thereto, they constituted a general government for special purposes, delegated to that government certain definite powers, reserving each State to itself, the residuary mass of right to their own self-government; and that when so ever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force: That to this compact each State acceded as a State, and is an integral party, its co-states forming, as itself, the other party: That the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers; but that as in all other cases of compact among parties having no common Judge, each party has an equal right to judge for itself, as well of the mode and measure of redress.

Jefferson and Madison failed in their attempts to have other state legislatures declare the Sedition Act unconstitutional. In fact, nine states rejected the states' rights theory of the Virginia and Kentucky Resolutions. The Massachusetts lawmakers predicted that the states' rights theory would reduce the national government "to a mere cypher (zero) with the form and pageantry of authority without the energy of power."

Rejection of his theory by other states did not change Jefferson's thinking. In 1799 he wrote his friend Madison to express his willingness to "sever ourselves from the union we so much value, rather than give up the right of self-government which we have reserved, and in which alone we see our liberty and happiness." Jefferson's states' rights theory and his willingness to put liberty above Union was used many times over the next 70 years to oppose laws that states did not like. In 1860-1861, it was used to justify secession. Similar arguments have been used to justify continued racial segregation and non-payment of taxes.

Student Exercises:

1. Summarize the states' rights argument used by Jefferson to oppose the Sedition Act.
2. Which do you think is a greater threat to our country—laws limiting free speech, such as the Sedition Act, or the states' rights theory supported by Jefferson and Madison?