The Alien and Sedition Laws and the Virginia and Kentucky Resolutions

John Arthur Russell
Loyola University Chicago

Recommended Citation
http://ecommons.luc.edu/luc_theses/1243

This Thesis is brought to you for free and open access by the Theses and Dissertations at Loyola eCommons. It has been accepted for inclusion in Master’s Theses by an authorized administrator of Loyola eCommons. For more information, please contact ecommons@luc.edu.

This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 License.
Copyright © 1954 John Arthur Russell
THE ALIEN AND SEDITION LAWS AND
THE VIRGINIA AND KENTUCKY
RESOLUTIONS

BY
John Arthur Russell

A Thesis Submitted to the Faculty of the Graduate School
of Loyola University in Partial Fulfillment of
the Requirements for the Degree of
Master of Arts

June
1954
LIFE

John A. Russell was born in Chicago, Illinois on May 14, 1930.

He was graduated from St. Ignatius High School, Chicago, June, 1948. His undergraduate work was done at the University of Illinois and Loyola University where he received his Bachelor of Science in Social Science, June, 1952. The writer began his graduate studies at Loyola in the summer of 1952.

In September, 1952 he began substitute teaching in the Chicago Public High Schools.
TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>The significance of the Alien and Sedition Laws and the Virginia and Kentucky Resolutions--The development of a party spirit--Foreign relations with France and England--Relations with France reach a crisis--Congress prepares the country in the event of war--The Alien and Sedition Laws become a part of Congressional action.</td>
<td></td>
</tr>
<tr>
<td>II. THE PASSAGE OF AND RESPONSIBILITY FOR THE ALIEN AND SEDITION LAWS</td>
<td>22</td>
</tr>
<tr>
<td>The Laws--Federalists take action--The passage of the naturalization laws--Control of aliens--The times require action--A seditious press--The press is regulated--Why the Laws were passed--Hamilton's role--Adams' part in their passage.</td>
<td></td>
</tr>
<tr>
<td>III. PUBLIC RECEPTION OF THE ALIEN AND SEDITION LAWS AND THE PASSAGE OF THE VIRGINIA AND KENTUCKY RESOLUTIONS</td>
<td>52</td>
</tr>
<tr>
<td>The fears of the Republicans--Kentucky's reaction--Virginia's sentiments--Jefferson and Madison accept responsibility--Drafting the Kentucky Resolutions--Virginia joins Kentucky--The states oppose the Resolutions--Republicans reaffirm the doctrine--Purpose of Resolutions.</td>
<td></td>
</tr>
<tr>
<td>IV. SIGNIFICANCE OF THE VIRGINIA AND KENTUCKY RESOLUTIONS</td>
<td>71</td>
</tr>
<tr>
<td>The difficulty of a critical interpretation--Madison's position--Jefferson's position--Permanent significance of the Resolutions.</td>
<td></td>
</tr>
<tr>
<td>V. CONCLUSION</td>
<td>81</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>84</td>
</tr>
</tbody>
</table>
CHAPTER I

INTRODUCTION

Because the period between 1789 and 1800 profoundly influenced the subsequent development of the United States, it has been the subject of intensive study. Since this period includes a profusion of significant events, a certain amount of selectivity is necessary for any historically thorough treatment. For this reason, the Alien and Sedition Laws have been the topic of numerous historical monographs, while the Virginia and Kentucky Resolutions have been the subject of other studies. The separate examination of these two sets of legislative pronouncements has produced a rich store of information. However, The Alien and Sedition Laws and the Virginia and Kentucky Resolutions are interrelated so intimately that they also justify a combined study. It is my purpose to examine the two in order to point out their combined, as well as their independent, effects on the development of United States policy.

The significance of the two is vividly highlighted when we enumerate the many precedents and effects attributed to them by various historians. Many studies point to the Alien and Sedition Laws as being the first strictly partisan legislation that Congress passed. Others use them as an example to prove their theory that there was a definite plan in the mind of the
Federalists to establish a monarchical government. They have been called, by some, one of the chief causes of the Federalists' decline and subsequent extinction. They have been cited because they were the primary factor in bringing about the Virginia and Kentucky Resolutions.

Some historians recognize the Resolutions as the first formal expression of the states on the theory of "states rights". Most historians point to them as the documents in which the ideas of nullification and secession were first expressed. The Resolutions also played a significant role in crystallizing the Republican Party and, to a large degree, in accounting for its victory in 1800.

In order to interpret correctly the various causes and multiple effects of the "Laws" and "Resolutions", we must examine them in the light of the domestic and foreign events of their era. The first Washington administration, under the guidance of Hamilton, had gone a long way in solving most of the perplexing domestic problems that had faced the new nation. However, in this attempt, administration unity, as desired by Washington, was almost completely destroyed. When the discussion of such problems as the funding of the national debt, the assumption of state debts, the support of public creditors, the establishment of a national bank, the enactment of a tariff and the increase of internal taxes arose, two political parties developed in the effort
to offer solutions. Hamilton and his associates believed that the only logical solution was the assumption of firm leadership and responsibility by the national government. Fearing that such a policy would diminish the strength of the state governments, over which the people had more direct control, Jefferson advocated a system in which the state governments would assume the leading role. His program catered to the agrarian interests, whereas Hamilton's program benefitted the mercantilistic element. At times, party lines were obscured on measures of slight importance or on measures which, of necessity, cut across both mercantilistic and agrarian interests. However, in each of these groups, there were sufficient numbers consistently loyal to the opposed principles to deserve the name, "party". The followers of Hamilton became known as the "Federalists", and those of Jefferson as the "Democratic Republicans".

This party division was illustrated and sharpened by the newly emerged partisan press. Early in Washington's tenure

---

1 The idea that political parties existed at this time is open to question. Ogg Libby, in his "Sketch of the Early Political Parties in the United States", The Quarterly Journal of the University of North Dakota, II, April, 1912, 205-242, denies that parties truly existed at this time. His opinion is that the division was one of factions rather than parties. For a contrary opinion see Charles A. Beard, Economic Origins of Jeffersonian Democracy, New York, 1915, 19-28.

2 Ibid., 32-33.
John Fenno\(^3\) began publication of the *Gazette of the United States* which was an avowed organ of the administration, and more particularly of the policies of Hamilton.\(^4\) It was an open secret that Hamilton wrote copiously for Fenno's paper and that the alliance did not stop there. At one instance, when the *Gazette* was in a financial predicament, Fenno appealed to Hamilton for aid.\(^5\) Evidently this aid was made available because the *Gazette* not only continued in existence, but became a daily.\(^6\)

James Madison and others, fearing the influence of the *Gazette of the United States*, suggested that Jefferson take steps to counteract its influence. With this purpose in mind, Philip Freneau, who was the poet of the Revolution, was brought to Philadelphia where he set up the *National Gazette* on October 31, 1791.\(^7\) Jefferson's chief contribution in this project was the creation of a position in the State Department for Freneau.\(^8\)

---

3 John Fenno was a Boston school teacher who moved to New York in order to establish a "court journal".


6 Mott, *American Journalism*, 123.


While, to some extent, the newspapers only reflected the bitterness of the partisan warfare, they also played an important role in increasing that bitterness. "Vituperation and abuses were carried to unheard of lengths". The Republican papers, in opposing the administration, seem to have been the worst offenders, but some Federalist editors, like William Cobbett, believed that they must return two blows for one.

The breach between the two parties, which had been created by the conflict over solutions for the domestic problems, was given further momentum by our foreign relations with France and England. Hamilton's conservative tendencies and his aristocratic and monarchical beliefs disposed him to favor England, the personifier of these ideas. His theories led him to advocate a policy in which amicable ties with England would take precedence over our relations with other states. Because of this conviction, he urged a policy of "acquaintance, rather than friendship" with France. However, subsequent developments in France - the execu-


10 William Cobbett was not widely supported by the Federalists because his style was too venomous even for them.

11 References which indicate this attitude will be cited later. One of the best examples of this attitude is the attack on Washington, which appeared in the *Aurora*, when he retired from office. No one was exempt from criticism, not even the "Father of Our Country". See Allen Nevins, ed., *American Press Opinion*, New York, 1928, 21-22.
tion of Louis XVI and the Reign of Terror - caused him to adopt a policy of outright animosity toward France.\(^{12}\)

Jefferson's convictions were diametrically opposed to those of Hamilton. In connection with England, Jefferson preferred to follow a firm policy whereby the United States would not be considered a subservient power to her. He felt that the bonds between the United States and France were more harmonious than those between the United States and England; consequently, he urged a friendly policy toward France.\(^{13}\) This attitude became more pronounced as the years went by, but he never lost his equilibrium as did some of his Republican contemporaries.

An examination of the more important diplomatic developments of this period will increase our insight into the operative aspects of the two divergent beliefs. Simultaneously, such an examination will indicate the catalytic influence that these developments had upon the enactment of the Alien and Sedition Laws. In the main, these relations will be limited to those with France and England.\(^{14}\)

---


14 Although our relations with other countries, such as Spain, played an important role at this time, they have no direct bearing on the topic under investigation.
Relations with France had been favorable from the days of our insauspicious beginnings when she so helpfully came to our aid during the Revolutionary War. The situation changed by the 1790's; France was then enveloped in a Revolution. As long as her affairs were confined to the continent of Europe, the United States was able to avoid serious international complications with her. However, this favorable situation was disrupted early in 1793 by three events: the execution of Louis XVI, the French declaration of war on England and the activities of Citizen Edmond Genet.

On January 21, 1793 Louis XVI was sent to the guillotine for treason, or to use the term of the popular press, Louis XVI "coupit his capet". A wave of Republicanism swept over the country and even penetrated New England, which was the stronghold of Federalism. French songs were sung, the names of streets were changed, titles were held in contempt, "citizen" and "citessa" began to be used, and tri-colored cockades were to be seen throughout the nation. 15 This reaction had hardly subsided when the news of France's declaration of war on England was received early in April. Would the United States ally herself with France or England, or would she remain neutral?

In order to clarify our position, Washington came to a

15 John S. Bassett, The Federalist System 1789-1801, New York, 1906, 85-
decision and announced his Neutrality Proclamation of April 22, 1793:

... the duty and interest of the United States requires that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial toward the belligerent powers.16

The large Francophile element vehemently repudiated such a policy.17 In its estimation, this was an outright breach of our treaty of alliance with France. Philip Freneau, in his National Gazette, did a great deal to formulate and encourage this opinion. His work can be better understood after an examination of an article which appeared in his newspaper at this time:

... the proclamation abrogates the treaties already existing between the United States and France from which we have long enjoyed important advantages, but if this be the true construction how can the proclamation be considered as consistent either with our duty or interest? With our duty it cannot accord, so long as we pretend to any faith as a nation or remember with gratitude the circumstances under which our treaties with France were concluded and the generous exertions of that nation in the cause of American liberty. If it be the duty of a free nation to forget those friends to whom she is in a great measure indebted for a national existence; to view with cold indifference the struggles of those very friends to support their own liberties against an host of despot; and in spite of the reciprocal ties of national treaties to treat an inveterate and cruel enemy with the same friendship as our best and most faithful ally — if such be the duty of


17 The Writings of Thomas Jefferson, edited by Paul L. Ford, New York, 1898, VI, 217-251, shows that Jefferson favored neutrality, rather than going to the extreme of entering the war as a French ally, an attitude that was adopted by some of his followers.
Americans as declared in the proclamation, then is that proclamation to be regarded as disgraceful to the American character.18

The third event which disrupted our favorable relations with France occurred simultaneously with the preceding one. Two weeks before the Neutrality Proclamation, April 5, 1793 Genet, the French minister, arrived in the United States. From this time until he was replaced by Jean Fauchet, he increasingly experienced the displeasure of the administration due either to his consistent attempts to meddle in domestic affairs or to his attempts "to make the United States a cat's-paw for French policy".19 As a result of these events, the previous friendly relations between the two states were disturbed.

A complete severance of diplomatic ties almost occurred soon thereafter as the result of certain of our dealings with England to which France took exception. In these dealings with England, the administration was primarily concerned with those problems which had been left unsettled by the Peace Treaty of 1783. Among these was the British retention of the northern posts and the existence of an Indian problem in that area, apparently British inspired. Furthermore, the war which had broken out be-

18 Philadelphia National Gazette, June 1, 1793.

19 Leland D. Baldwin, the Stream of American History, New York, 1952, I, 330. It is interesting to note that Genet was not the only French minister to bungle his mission. Fauchet and Adet were also guilty of this. See James A. James, "French Opinion As a Factor in Preventing War Between France and the United States," American Historical Review, New York, XXX, October, 1924, 44.
tween Britain and France in 1793 created for us some complicated problems which resulted from Britain's control of the seas. These pertained to compensation for the seizure of American ships, impressment and, in general, observance of neutral rights.

John Jay was given the responsibility of securing a treaty which would solve these problems. After protracted negotiations, a treaty was drawn up and duly ratified on June 24, 1795. In accordance with this treaty, Britain yielded absolutely nothing that she had not promised in the Treaty of 1783, but she did agree that most of the matters of controversy might be submitted to mixed arbitral commissions. In fact, instead of settling the matters of impressments and ship seizures, the treaty actually provided that the seizure of French goods on American ships might be allowed if they were paid for. That the treaty would result in arousing the Francophile element in the United States and in creating French resentment against us abroad was inevitable.

"Bache's publication of the treaty produced a violent commotion which, in extent and intensity, is unparalleled in

20 Hamilton had just revealed to the British Minister that we would not participate in the newly formed European Armed Neutrality Pact. Our diplomatic bargaining position was thus weakened, and this highly unsatisfactory treaty resulted. See Samuel F. Bemis, Jay's Treaty, New York, 1923, 246-248; and Frank Monaghan, John Jay, Defender of Liberty, 1935, 261-387.

21 Benjamin Bache, who was a grandson of Franklin, was the editor of an independent Republican paper, The Aurora.
American history." Other newspapers quickly took up the issue. Of the many attacks upon the treaty, a series of fourteen letters by an anonymous writer, who signed himself "Franklin", and which appeared in the Independent Gazetteer, a Federalist newspaper published in Boston, was perhaps the most outspoken and extravagant. "Franklin" concluded that the only logical avenue open to Congress was the impeachment and removal of the president for his role in securing the ratification of the treaty.23

The "damnation" of the treaty and Jay did not cease with the action taken by the newspapers. Banquets which were held in New York, Boston and Charleston publically condemned the treaty. Jay was burned, hanged and mocked in effigy.24 Philip Faneau captured the Republican sentiment in the parody:

This Treaty in one page confines
The sad result of base designs;
The wretched purchase here behold
Of traitors - who their country sold.
Here, in their proper shape and mien
Fraud, perjury, and guilty are seen.
And few, a chosen few, must know
The Mysteries that lurk below....25

22 Monaghan, John Jay, 390-91.
Criticism did not cease with writings and demonstrations. The various Republican Societies felt it their duty to draw up petitions which were sent to the President condemning his part in the treaty's ratification. 26

Meanwhile, across the Atlantic the French reaction to the Jay Treaty served as additional fuel for weakening our ties of friendship. France felt betrayed. James Monroe, who was our minister there, was placed in a ticklish situation in his attempt to maintain friendly relations. 27 Prior to the treaty's passage, Monroe had let it be known that the treaty would be non-committal. The subsequent disclosure of its contents revealed concessions to England which made it extremely repugnant to France. 28 Monroe's attempt to conciliate the Revolutionary Government met with abject failure. The French refused to listen to him, and his own government rebuked him because of his pro-French sympathies. In August, 1796 he was recalled because of his pronounced hostile sentiments toward the Jay Treaty and the Federalist Party. His attempt to represent the people rather than the government of the United

26 Eugene P. Link, Democratic-Republican Societies, 1790-1800, New York, 1942, 131-134.

27 Our previous minister, Gouverneur Morris, had been recalled when his monarchical beliefs led him to commit serious indiscretions which aroused the French government. His recall was also an expression of French retaliation for our demand that Genet be recalled from the United States.

States was unacceptable to the minds of the administration. 29
Charles C. Pinckney of South Carolina was appointed in his place. However, when Pinckney arrived in Paris early in December, 1796 France refused to accept him as minister.

This, then, was the state of affairs when John Adams came into office on March 4, 1797. Believing that the legislature should participate in the attempts to untangle these involvements with France, Adams called it into special session. On the second day of this session, May 16, 1797 Adams presented a special message. 30

In this message, Adams traced our earlier relations with France and described the latest development, the French refusal to accept Pinckney. This rejection, Adams asserted, demanded a firm attitude on the part of the United States, and in indicating that he was willing to take such a position, he said:

Such attempts ought to be repelled with a decision which shall convince France and the world that we are not a degraded people, humiliated under a colonial spirit of fear and sense of inferiority, fitted to be the miserable instruments of foreign influence. . . . 31


31 Ibid., 235.
Continuing, Adams asked that steps be taken to establish a navy which would protect our foreign commerce, and a militia, which would "render that natural and safe defense of the country efficacious".32

Since the Federalists controlled Congress, they were willing to accept the advice which Adams offered. It was finally agreed that a commission to France might be advisable and successful in resolving our differences with that nation. Such men as James Madison, Thomas Jefferson, Francis Dana, Elbridge Gerry, John Marshall, and Charles C. Pinckney were considered, and from these, Elbridge Gerry, John Marshall, and Charles C. Pinckney were chosen to serve.33

In the event that this commission failed and war resulted, Congress proceeded to enact laws which would prepare the defenses of the country. The first of these acts was one for the protection of the ports and harbors. Under it, one hundred and


33 Originally Francis Dana, the Chief Justice of Massachusetts, was nominated to the commission, but he refused the appointment; Elbridge Gerry, a New England Republican, was appointed in his place. Ibid., 245; and Bassett, The Federalist System, 225-227.
fifteen thousand dollars was appropriated for harbor defense.\textsuperscript{34} A second measure, passed on June 24, 1797 gave the president control of eighty thousand militia, subject to call in times of necessity.\textsuperscript{35} A third act, passed on July 1, 1797 authorized the president to have three frigates fitted with guns.\textsuperscript{36} Following the enactment of this legislation, Congress adjourned on July 10, 1797 to await developments from abroad.

Arriving in Paris on October 4, 1797 the commission was delayed in being formally received. During this delay, three men referred to later as X, Y and Z, who were undoubtedly acting on the orders of the French Foreign Minister, Maurice de Talleyrand, approached them with certain demands. In short, these demands were for an outright bribe and a long-term loan, which would, in the last analysis, amount to a gift.\textsuperscript{37} In their attempt to deal directly with Talleyrand, the commissioners met with failure because Talleyrand flatly refused to meet with them. Marshall and Pinckney decided to break off relations immediately. Gerry, over

\textsuperscript{34} Richard Peters, ed., \textit{Public Statutes at Large of the United States}, Boston, I, 521-522.

\textsuperscript{35} Ibid., 522.

\textsuperscript{36} Ibid., 524.

\textsuperscript{37} J. Fairfax McLaughlin, \textit{Matthew Lyon}, New York, 1900, 313.
the protests of his colleagues, accepted the invitation of Tallyrand to remain and continue the negotiations.  

When Congress reconvened for its second session on November 13, 1797 its members were content to attend to strictly routine affairs and came to no decision in regard to the French embroilment, hoping that advice from the commission would indicate the policy which should be followed. The public also awaited the news. With the passing of November, December and January tension was greatly relieved. By February no news was interpreted as good news.  

Finally, on March 4, 1798 the dispatches from the commission arrived. Since they had to be decoded, action was delayed until March 19, 1798.  

In the meantime the war party, under the guidance of Pickering who was greatly influenced by Hamilton, had been agitating for firm action by the executive. Hamilton had suggested that the executive take a strong position so as to convince France that if pushed too far, we would not avoid war. Even Adams, who is generally praised for his extremely cautious attitude in our re-

38 It is interesting to note the importance that McLaughlin places on Gerry's acceptance of Tallyrand's invitation. "Had Gerry come back with the other envoys, war indeed would have followed." Ibid.


40 Richardson, ed., Messages and Papers, I, 263-264.

lations with France, felt that a strong policy must be adopted. In an open letter directed to the heads of the cabinet, dated March 13, 1796 he asked:

"Will it be advisable to present immediately to Congress the whole of the communication from our ministers in France, with the exception of the names of the persons employed by the minister Tallyrand to exhibit and enforce his requisitions for a bribe under an injunction of secrecy as to that particular?"

This, in itself, would have caused quite a reaction. But Adams even went so far as to ask: "Ought the President, then, to recommend, in his message, an immediate declaration of war?"

Fortunately, this pro-war attitude was tempered by more cautious thinking. But Adams was not willing to let the situation pass without a strong message to Congress. In this message, he informed them of the latest developments resulting from the commission's activities. In his opinion, every peaceful means had been taken to avoid war with France, but she had not responded to these measures. The next logical step, so he advised, was to prepare the country for hostilities:

---

43 Ibid.
... I . . . exhort you to adopt with promptitude . . . such measures . . . for the protection of our seafaring and commercial citizens, for the defense of any exposed portions of our territories, for replenishing our arsenals, and to provide such efficient revenue as will be necessary to defray extraordinary expenses and supply the deficiencies which may be occasioned by depredations on our commerce. 44

Jefferson, the leader of the pro-French group, became fearful that Congress would take steps that would lead to immediate hostilities. In a letter to James Madison, dated March 21, 1798 he noted that the latest developments had excited increased indignation on the part of the war party. In order to avoid any hasty action, he advocated that Congress be adjourned "in order to go home and consult their constituents on the great crisis of American affairs now existing" 45

Contrary to Jefferson's advice, Congress passed thirty-two measures designed to negate French influence in the United States and simultaneously to prepare the national defense.

Since it was anticipated that war would necessitate the defense of our coasts, it was deemed essential that a formal department of the navy be created. Consequently, an act was passed on April 30, 1798 which provided for such an establishment. 46

44 Richardson, ed., Messages and Papers, I, 264-265.

45 Ford, ed., Writings of Jefferson, VII, 219-220. This attitude was repeated in a letter to James Monroe, written the same day. Ibid., 221-222.

46 Peters, ed., Public Statutes at Large of the United States, I, 553-554.
other acts were passed to supply ships, crews and monies for the new department. Additional measures were enacted which gave the president control of thirteen thousand regular troops, and in case of invasion, control of ten thousand more. Approximately $1,730,000 was appropriated to provide for these activities.  

In pursuing such a policy, the Federalist-dominated Congress was inspired by partisan as well as by patriotic motives. What better opportunity for unifying the nation could there be than a good war scare? At the same time, Congressional elections were to be held in 1798. A war scare was an excellent rallying point to swing the support of the voters behind those members who had striven so conscientiously for the defense of the nation.

The executive attitude of the moment coincided with that of Congress. As an indication of how far the rupture between the two countries had gone, Adams delivered another message to Congress in which he stated:

I will never send another minister to France without assurances that he will be received, respected, and honored as the representative of a great, free, powerful, and independent nation.

The final step occurred on July 7, 1798 when Congress


48 Richardson, ed., Messages of the Presidents, I, 266. The occasion for this message was France's treatment of John Marshall, Elbridge Gerry and Charles Pinckney.
declared the treaties with France void. 49

Various newspapers throughout the country instilled a definite war scare and fear of a pro-French domestic revolution in the public mind. During the period from 1798 to 1799 there were continuous references to the possibility of war with France. In William Cobbett's paper reference to this possibility became almost a standard column. On May 25th, he published a long article in which he asserted that there was a definite plan afoot for the American Democratic Societies to create a revolution. He refuted the naive opinion that the span of an ocean decreased the possibility of war with France. He continued by asserting that if French troops were landed, they could unite with the Irish people who were members of the American Societies. 50

This spirit was not peculiar to one newspaper. The Philadelphia Gazette of June 29, 1798 contained an article which cleverly suggested the imminent possibility of invasion and war.

We are told that in addition to the immense armament collected at Flushing, gunboats and rafts of a peculiar construction are building in all the forts opposite to our eastern coasts. 51

49 Peters, ed., Public Statutes at Large of the United States, I, 578.


51 Philadelphia Gazette, June 29, 1798.
The whole country reflected the fear of war with France. Fortunately, in spite of these bellicose words and deeds, an official policy of peace was maintained. The evils that are co-existent with and the result of war were avoided by Adams' adroit treatment of subsequent developments.52

A counterpart of the foregoing legislation was the passage of the so-called Alien and Sedition Laws. These were considered by Congress as measures necessary to squelch any hostile Francophile element that might attempt to rebuke the administration for its attitude toward France. The administration was being defamed in the public press, and even the president was not immune to criticism. What made these accusations more obnoxious to the administration was the fact that most of the authors of these criticisms were aliens. As a result, two obvious questions arose. Were not these men in the pay of France? Would it not be best for the country that such men be controlled and possibly barred from the country? It was towards an answer to these questions that the administration now turned its attention.

CHAPTER II

THE PASSAGE OF AND RESPONSIBILITY FOR
THE ALIEN AND SEDITION LAWS

The Federalists believed that legislative action would offer the most comprehensive solution to these problems. Proceeding under this conviction, they introduced a series of bills "which instituted a quasi-reign of terror, brought the country to the brink of civil war and disunion, and created repercussions the echoes of which have not yet died away."¹ These bills were four in number: the Naturalization Act, the Alien Friends Act, the Alien Enemies Act, and the Sedition Act. Of the four, the Naturalization Act best illustrates the hostility of the Federalists toward the obstructionist policies of the Republican Party.

Dating from 1792, Europe became an uncomfortable place for French sympathizers and Republicans. Consequently, the Irish, Scotch, and German malcontents began to flow into the United States for refuge. These groups spurned the party of conservatism and privilege, and, as soon as they became naturalized, joined the party that sympathized with France and upheld demo-

ocratic principles. As early as 1795, it was deemed necessary to place some restrictions on this unarrested flow of immigrants. Thus, in that year, a naturalization act was passed which increased the term of residence necessary for naturalization from two to five years. This change had not been a party issue. The Federalists had favored it, because they feared the revolution in Europe would prompt an emigration of turbulent and troublesome political refugees; Republicans, because they feared the revolution would drive out aristocrats, who, if citizens, would stifle American liberties.

By 1798, it was obvious to the Federalist leaders that their strength was being challenged by this foreign element. Harrison Otis, who was one of the Federalist leaders in the House of Representatives, expressed this fear in a letter to his wife:

---


4 Hansen, *The Atlantic Migration*, 66-67. See also John C. Miller, *Crisis in Freedom*, Boston, 1951, 47. Miller believes that this earlier legislation was also part of a Federalist plot to weaken the ranks of the opposition.

5 The Federalist attitude toward immigration appears even more unusual when it is realized that the number of immigrants at this time "did not average much more than five or six thousand a year, a number often matched in a single day in the unrestricted immigration before the First World War." John Allen Krout and Dixon Ryan Fox, *The Completion of Independence 1790-1830* V of *A History of American Life*, ed., Arthur M. Schlesinger and Dixon Ryan Fox, 12 vols., New York, 1944, 4-5.
"If some means are not adopted to prevent the indiscriminate ad-
mission of wild Irishmen and others to the right of suffrage,
there will soon be an end to liberty and property." The Fed-
eralist minister to England, Rufus King, had succeeded in obtain-
ing Britain's promise to prevent Irish political exiles from be-
ing sent to the United States. This was not sufficient; the
Federalists needed a law which would bar the immigrants from the
rights of citizenship in order to eliminate their disturbing in-
fluence.

An unsuccessful attempt had been made during the first
session of the Fifth Congress to establish a committee to inves-
tigate the Naturalization Law of 1795 for the purpose of revising
it. During the second session of this Congress, the revision
proposal received consideration. In mid-April, a resolution was
referred to the Committee on Commerce in the House of Representa-
tives to investigate the possibility of amending the measure.

6 Samuel E. Morrison, ed., The Life and Letters of
Harrison Gray Otis, Boston, 1913, I, 107.

7 King, ed., The Life and Correspondence of Rufus King,
II, 635-649.

8 U.S. Congress, Annals of the Congress of the United

9 Ibid., 5th Cong., 2nd Sess., II, 1427.

Since all the remaining quotations pertain to the sec-
ond session, hereafter this work will be cited as the Annals of
Congress. There are three volumes for this session but since
they are paged consecutively, only the page will be cited.
when the Committee reported on May 1, 1798 it was satisfied with recommending merely a longer period of residence before naturalization. This recommendation, to the minds of the more ardent Federalists, such as Robert G. Harper and Harrison G. Otis, was insufficient. Harper asserted that "the time was now come when it would be proper to declare that nothing but birth should entitle a man to citizenship in this country." Otis supplemented Harper's declaration by further stating that contemporary alien-born Americans should be disqualified from holding any federal office. Although these ideas were not included in the final bill, they illustrate the thinking which characterized its proponents.

Albert Gallatin, who had been a thorn in the sides of the Federalists since he had been elected to the House, sought to exclude from the provisions of the restrictions pertaining to the bill aliens already in the country. Although the Republicans were

10 Ibid., 1566.
11 Robert Goodloe Harper was one of the leading Federalists in the House of Representatives from South Carolina.
13 Ibid., 1570.
14 Albert Gallatin had been removed from his seat in the Senate on the grounds that he had not fulfilled the Constitutional qualification of nine years citizenship. He was then elected to the House which demands only seven years citizenship.
successful in this latter undertaking, they failed to prevent its passage in the House on May 22, 1798. The bill was then sent to the Senate where it was referred to a committee which was composed of two Federalists and one Republican. As might be expected with such a committee, the bill was favorably reported and easily passed. In its final form it became law on June 18, 1798. As finally enacted, the Naturalization Act extended the required period of residence before naturalization from five to fourteen years. Furthermore, it provided that no alien who was a citizen of a nation with which the United States might be at war was eligible for citizenship.

This was the first of the legislation which was to affect aliens, but because of its nature, its importance and purpose were not fully realized at the time of its proposal and enactment. Much of its bite was weakened by subsequent action taken by the states.

As long as the states possessed the power of naturalization, a federal law was not likely to be of much utility. Pennsylvania, for example, permitted naturalization, in-

15 *Annals of Congress, 1775-1783.*

16 William Bingham of Pennsylvania and Richard Stockton of New Jersey were the two avowed Federalists. The lone Republican was Henry Tazewell of Virginia.

17 *Annals of Congress, 574-576.*

cluding the right to vote in federal as well as in state elections after two years residence; and Maryland required only one year.19

Although the Naturalization Act, as has been indicated, sprang from purely political motives, the Alien Acts, which form the next step in the Alien and Sedition system, arose from a different cause. The basic motive behind the latter was the fear that war was inevitable and that steps had to be taken to control the aliens from foreign countries, particularly those from France. Almost every person in the country recognized the possibility of war. Even Jefferson, who strongly upheld the principle of neutrality, recognized that France had given "sufficient cause of war" by her "everyday trampling on the rights of all the neutral powers."20 What would happen if war were declared with France? Wouldn't the Jacobins in the United States join forces with that nation? The country was daily fed with news that would seem to indicate that such a dangerous possibility did exist.

It is my sincere opinion, that they have formed the diabolical plan of revolutionizing... the whole continent of America. They have their agents and partisans without number, and very often where we do not imagine. Their immoral and blasphemous principles have made a most alarming progress.21

19 Miller, Crisis in Freedom, 47-48.
20 Ford, ed., The Writings of Jefferson, VII, 277-278.
President Adams himself feared that there was a dangerous element in the country that must be controlled. During the months from April to July he expressed these fears in his various writings. In one letter of June 25, 1798 he clearly voiced this fear:

If you have long seen foreign influence prevailing and endangering the peace and independence of our country, so have I. If you have long seen, with painful sensations, the exertion of dangerous and restless men, misleading the understanding of our well-meaning citizens, and prompting them to such measures as would sink the glory of our country and prostrate her liberties at the feet of France, so also have I.22

England likewise was experiencing a similar difficulty in regard to the Jacobin element. She took steps to solve her problem by passing certain Alien Laws so as to place some controls on the activities of these foreigners.23 Undoubtedly, some of the Federalists were aware of these laws and could see the advantages that they offered.24

This was the general state of affairs when the question of the aliens was brought up in the House of Representatives on May 3, 1798. Harrison Otis felt the time had come when something

24 Various Federalist leaders made use of the English legislation to prove that other countries had provided for the regulation of the activities of aliens, provisions which, to their minds, were essential to the wellfare of the country.
must be done to control those people who were working against the
good of the government. He offered a course in which the govern-
ment would strike these people "with terror" and not "boggle"
around for a course to follow. Such action, in his estimation,
was as vital as any of the defensive measures that had been taken
up to this time.25 Samuel Sewell, a Federalist Representative
from Massachusetts, moved that the proposed bill should be limited
to aliens from only those countries at war with the United
States.26

The Senate, working on its own, had been investigating
a bill to regulate these elements. As early as April 26 a com-
mittee composed of James Hillhouse, John Laurance, Samuel Liver-
more, Jacob Read and Theodore Sedwick27 had been established to
investigate the possibilities of a measure to regulate dangerous
aliens.28 On June 8 the Senate's bill was passed by a strict

26 Ibid., 1580-1581. The amended bill was later re-
named the Alien Enemies Bill.
27 Theodore Sedwick was later replaced by William
Bingham when the former became too ill to continue as a member of
the committee. All of the members of this committee were mili-
tant Federalists.
party vote of sixteen to seven. Humphrey Marshall from Kentucky was the only Federalist to break ranks and vote against it. On June 8, 1798 this measure, generally referred to as the Alien Friends Bill, was sent to the House of Representatives. Under this act it was proposed that the President be given the power:

to order all such aliens as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government. to depart out of the territory of the United States.

Since the House version had been amended to affect only alien enemies, it was decided that the Senate's more inclusive form be discussed first. Consequently, between June 8, when it was received and June 21, when the measure passed, it was the major topic of debate in the House. During this time, the House was divided into two camps.

29 Annals of Congress, 575. Unfortunately, the Senate's journals, at this time, are extremely brief. For this reason, most of the debates which arose over this measure and the following measures, the Alien Enemies Bill and Sedition Bill, are drawn from the records of the House.

30 Mr. Marshall was a senator from Kentucky. His vote for the Jay Treaty had so aroused his Republican constituents that he narrowly escaped a bath in the Kentucky River. Perhaps this episode "watered" down some of his Federalist beliefs. Dumas Malone, ed., Dictionary of American Biography, New York, 1928-1944, XII, 310.

Albert Gallatin once again assumed the leading role in opposing this Federalist legislation. He was ably assisted by Edward Livingston and Robert Williams of New York. In the debates that ensued these men attempted to show that the measure was unconstitutional for several reasons. Among these reasons were the following. Since no specific power had been given to the Federal Government to regulate aliens, such powers were reserved to the states under the tenth amendment. Another argument was that this act would be contrary to the clause in the Constitution which states that Congress shall not interfere with the immigration or emigration of persons, unless such proceeding is approved by the states, until 1808. This bill would also violate those sections in the Constitution which guaranteed the "writ of habeas corpus" and "due process of law." Other arguments were presented to show that such a law would break down our system of separation of governmental powers. The judicial branch of government would be considerably weakened since the president would be authorized to act in their capacity. Likewise, such a law as

33 Ibid., 1955.
34 Ibid.
this would be in fundamental opposition to the American system of justice if suspicion alone were sufficient to cause aliens to be expelled from the country.\footnote{Ibid., 1964.} A law as stringent as this, they argued, would hinder immigration which would be necessary for future expansion and development of the United States; in its present form, the law not only hindered the immigration of Frenchmen, but affected English, German, and Irish alike.\footnote{Ibid., 2021-2022.}

Robert Harper and Harrison G. Otis were the nucleus of those who favored the passage of the bill. They were aided by such men as Jonathan Dayton, who was Speaker of the House, Samuel Sewall and John Reed of Massachusetts, and William Gordon of New Hampshire. These Federalists, on their part, presented what they felt were the arguments justifying and authorizing such a law. They pointed to the fact that the Federal Government was given the power to regulate commerce, and under this power, could also regulate the immigration of aliens.\footnote{Ibid., 1958.} Otis insisted that such a law was necessary for the common defense and was consequently authorized under the Preamble of the Constitution.\footnote{Ibid., 1959-1960.} The war scare was used once again. "The times are full of danger, and it would be
the height of madness not to take every precaution in our power," declared Otis. Harper reaffirmed this attitude in a more dramatic and emotional speech when he declaimed:

To wait until the dagger is plunged into our bosoms, before we take any means of defense? Until the thief breaks into our house before we bar the doors. . . no one would say this would be a good policy.41

He also introduced the argument that those European countries which had managed to escape an infiltration of French aggressive spirit "owe their safety to a bill like this; and unless we follow their example, and crush the viper in our breast, we shall not, like them escape the scourge which awaits us."42

By June 21, 1798 it became obvious that the proposed legislation was going to pass in spite of opposition by the Republicans. As a last expression of disagreement, Edward Livingston denounced the Alien Bill as "...an act which he believed was in direct violation of the Constitution and marked with every characteristic of the most odious despotism."43

With a marked degree of insight, he continued to discuss what would happen if this bill were passed.

40 Ibid., 1989.
41 Ibid., 1992.
42 Ibid.
43 Ibid., 2005.
Will the States sanction our usurped power? Sir they ought not to submit; they would deserve the chains which these measures are forging for them, if they did not resist. For let no man vainly imagine the evil is to stop here, that a few unprotected aliens are to be affected by this inquisitorial power. . . . No sir, they will resist this tyrannic system, the people will oppose it, the States will not submit to its operation. They ought not to acquiesce, and I pray to God they never may.

If we exceed our powers, we become tyrants, and our acts have no effect . . . one of the first effects of measures such as this . . . will be dissatisfaction among the States, tumults, violations and a recurrence to first revolutionary principles. 44

Final action in the House of Representatives took place on June 21 when the measure was passed by a vote of forty-six to forty. 45 Once again voting was along sectional lines, as it had been in the Senate. The Southern States gave but eight votes for the bill, while twenty-seven votes from that section were against the bill. Of the twenty-six votes of the New England States, twenty-four were cast for the bill. 46

The next logical step in the program of the Federalists was to enact legislation to regulate alien enemies since they

---

44 Ibid., 2013-2014.


46 Miller, Crisis in Freedom, 53.
would certainly be more dangerous than alien friends. However, much to the dismay of the Republicans, Otis moved that such a bill be postponed since the Alien Friends Bill gave the President sufficient powers over aliens. Mr. Gallatin felt that this was foolish because: "If any bill respecting aliens was necessary, it was certainly a bill of this kind against alien enemies . . . ."47 Perhaps Otis' motion was a trap. Immediately after Gallatin said such a bill was necessary, Otis withdrew his motion, stating: "Since they (the opposition) were agreeable to pass it, he had no objection to it."48 The bill was then sent to the Senate which passed it, with amendments, July 2, 1798.49 The House confirmed the Senate's amendments the following day and it became law on July 6, 1798 when the President signed it. In accordance with this act the President, in time of war, was given the power to apprehend, restrain, or remove any citizen of a country with which we were at war for the safety of the United States.50

The last of the four acts, the Sedition Act, was enacted to regulate the highly partisan press. Objective news, as such, was nonexistent at that time, unless it happened to be in

48 Ibid., 2035.
49 Ibid., 596.
50 Peters, ed., Public Statutes at Large of the United States, 577-578.
regard to occurrences like a fire, a nonpolitical death, or an epidemic. On occasion, even these were made subjects of political criticism. Most published articles were partisan in character and politically inspired. The truth was not in them unless it happened to fit in with some preconceived political slant. The general stock in trade was abuse, epithets, violent repetition of charges, attacks, and more attacks.

Various leading statesmen agreed that such a disgraceful condition existed. As early as 1780 John Adams, then a member of the Second Continental Congress, had cried out against this flagrant misuse of the press.

There is nothing that the people dislike that they do not attack. They attack officers of every rank in the militia and in the army; they attack judges, governors, and magistrates of every denomination; they attack assemblies and councils, members of Congress and Congress itself whenever they dislike their conduct.51

Washington, who was often subjected to the biting pens of Bache and Fenno,52 once declared: "The publications in Fenno's and Bache's papers are outrages on common decency . . . ."53 He even gave as one of his reasons for retiring from political life "a disinclination to be longer buffeted in the public prints by a

52 See pp. 4, 5, and 11.
set of infamous scribblers."  

John Adams, as president, experienced similar treatment from a querulous press. In writing to Secretary of State Timothy Pickering, he posed a rhetorical question. "Is there anything evil in the regions of actuality or possibility that the Aurora has not suggested of me?" Later, in 1815, he summarized the place the press had played in the affairs of American government, and gave his tentative solution to the problem it had created. Have naked truth and honest candor a fair hearing or impartial reading in this or any other country? Have not narrow bigotry, the most envious malignity, the most base, vulgar, sordid, fishwoman scurrility, and the most palpable lies, a plenary indulgence, and an unbounded licentiousness? If there is ever to be an amelioration of the condition of mankind, philosophers, theologians, legislators, politicians and moralists will find the regulation of the press is the most difficult, dangerous, and important problem they have to resolve. Mankind cannot now be governed without it, nor at present with it.

The Federalist-dominated legislature accepted the problem of regulating the press unaided by such clear-thinking men as the theologians, philosophers, and moralists. The solution arrived at was highly unacceptable to the Republicans. The debates which took place were similar to those which had arisen over
the Alien Friends Bill. Differences in party viewpoint created a distinct line over which neither Federalist nor Republican dared cross.

The Senate was the first of the two houses to begin consideration of the Sedition measure. On June 26, 1798 a proposed bill was introduced and had a second reading.\(^{57}\) It was then sent to a "packed committee"\(^{58}\) and was subsequently reported and passed by a vote of eighteen to six on July 4.\(^{59}\) When the House heard that the Senate had passed this measure, it abandoned further discussion of a similar one which had originated there in order to eliminate any unnecessary duplication. The following day, the House received the bill and it became the major topic of debate. After several attempts by Livingston and Gallatin to delay discussion had failed, John Allen of Connecticut rose and presented a fiery speech in its favor. He denounced those who would oppose it as follows:

Because the Constitution guarantees the right of expressing our opinions and the freedom of the press, am I at liberty to falsely call you a thief, a murderer, an

\(^{57}\) *Annals of Congress*, 589-590. Since the session was drawing to a close, the Senate did not follow the customary procedure of allotting separate days for the first and second reading of bills.

\(^{58}\) Ibid., 591. Four of the five who served on the committee were outright Federalists; the fifth member was known to favor a Sedition Bill.

\(^{59}\) Ibid., 596, 599.
atheist. Because I have the liberty of locomotion, of
going where I please, have I a right to ride over the
footman in the path? The freedom of the press and
opinions was never understood to give the right of pub-
lishing falsehoods and slanders, nor of exciting sedition,
isurrection, and slaughter, with impunity. A man was
always answerable for the malicious publication of false-
hood; and what more does this bill require? 60

After citing an article which Bache had printed in the
Aurora in which he denounced the tentative Sedition Act as being
unconstitutional and as a measure which should be met with resis-
tance, Allen continued:

Such liberty of the press and of opinion is calculated
to destroy all confidence between man and man; it leads
to a dissolution of every bond of union; it cuts asunder
every ligament that unites man to his family, man to his
neighbor, man to society, and to Government. God deliver
us from such liberty, the liberty of vomiting on the pub-
lic floods of falsehood and hatred to everything sacred,
human and divine! If any gentleman doubts the effect of
such a liberty, let me direct his attention across the
water; it has there made slaves of thirty millions of men. 61

There followed several short speeches by Edward Living-
ston, Nathaniel Mason and Joseph McDowell who opposed the bill;
and by Robert Harper and Harrison Otis who favored it. Albert
Gallatin was then recognized. Gallatin attempted to refute
Allen's arguments and expose the sinister motives which he be-
lieved to lie behind the proposed legislation.

60 Ibid., 2097.
61 Ibid., 2098.
Was the gentleman afraid, or rather was (the) Administration afraid, that in this instance error could not be successfully opposed by truth? The American Government had grown on the affection of the people, it had been fully supported without the assistance of laws similar to the bill now on the table. It had been able to repel opposition by the single weapon of argument. And at present, when out of ten presses in the country nine were employed on the side of (the) Administration such is their want of confidence in the purity of their own views and motives, that they even fear the unequal contest, and require the help of force in order to suppress the limited circulation of the opinions of those who did not approve all their measures.62

Arguing thus that there was no need for such a bill,

Gallatin continued:

This bill and its supporters suppose, in fact, that whoever dislikes the measures of (the) Administration and of a temporary majority in Congress, and shall either by speaking or writing, express his disapprobation and his want of confidence in the men now in power, is seditious, is an enemy, not of (the) Administration, but of the Constitution, and is liable to punishment. That principle is subversive of the principles of the Constitution itself. If you put the press under any restraint in respect to the measures of members of Government; if you thus deprive the people of the means of obtaining information of their conduct, you in fact render their right of electing negatroy; and this bill must be considered only as a weapon used by a party now in power in order to perpetuate their authority and preserve their present places.63

The measure was then sent to committee, and because of other pressing problems, such as a proposal to establish a provisional army, additional extended debate did not take place until the ninth of July. At this time, various amendments were intro-

62 Ibid., 2109.
63 Ibid., 2110.
duced to limit the duration of the law. Robert Harper proposed one which would limit its enforcement to a period of two years; Richard Sprigg of Maryland preferred one year. But it was George Dent's amendment, which limited enforcement to March 3, 1801, that finally passed by a close vote.

The closing and principal debates occurred on the tenth of July. Once again the opposition was ably directed by Nicholas, Livingston, and Gallatin. This law, argued Nicholas, was in direct opposition to the Constitution, which did not give Congress any power to pass such a measure. Furthermore, it was expressly prohibited by the first amendment. What is more, such a law would not contribute to the making of good government; it would only contribute to the "suppression of every printing press in the country which is not obsequious to the will of Government." A free press, in Nicholas' estimation, was essential to democratic government. "To restrict the press, would be to destroy the elective principle, by taking away the information necessary to election, and there would be no difference between it and a total denial of the right of election, but in degree of usurpation." Even England, he recalled though involved in war, "stopped infin-

64 Ibid., 2139.
65 Ibid., 2141.
66 Ibid., 2144.
itely short of what is proposed by the present bill." Livingston merely reaffirmed the foregoing ideas and stressed the disadvantages that would result from such a law. "It would lessen the confidence of the people in the Government," he asserted. Gallatin also concurred with these judgments and added the argument that the proposed legislation would encroach upon the right of the states to hear libel cases under common law. Otis and Harper again led the debate in favor of the legislation. The former felt that the question of the constitutionality of the bill was based on two points. First, did the Constitution originally give Congress authority over the offenses described in this bill; and second, did the amendments to the Constitution eliminate or restrict this authority? The first question he firmly answered in the affirmative:

"... every independent Government has a right to preserve and defend itself against injuries and outrages which endanger its existence; for unless it has this power, it is unworthy the name of a free Government, and must either fall or be subordinate to some other protection."

As to the second question, Mr. Otis said that "to punish licentiousness and sedition is not a restraint or an abridgement of the

---

67 Ibid., 2145.
68 Ibid., 2156.
69 Ibid., 2163.
70 Ibid., 2146.
freedom of speech or of the press." 71

Harper, who was the last speaker, summarized the arguments for the measure. To him, current conditions made necessary such a bill so that the activity of the French sympathizers who were using sedition and libel to wreak havoc within the country might be controlled. 72 The House then proceeded to vote.

The Sedition Act was passed by the narrow margin of three votes, forty-four to forty-one. The sectional nature of the balloting was a duplicate of that for the previously related legislation. Of the forty-four favorable votes, only four were cast by Representatives from the South, and three of these were recognized Federalists. The New England States, on the other hand, supplied twenty-three favorable votes and only three against the bill. The Middle State vote was divided, seventeen for, and twelve against. The measure became law with the signature of President Adams on July 14, 1798. It provided:

That if any person shall write, print, utter, or publish, or shall cause or procure to be written, printed, or 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, or either house of the Congress of the United States, with intent

71 Ibid., 2147.

72 Ibid., 2164-2171.
to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government, then such person being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.73

With the passage of this final measure the Federalist program pertaining to these matters was complete, and the popularly-called Alien and Sedition Laws, for better or for worse, were now in effect.

Who is to bear the responsibility for this legislation which, according to one authority, had been "conceived in prejudice and midwifed by fear."74 was one man, a group, or a party responsible? John Miller analyzes the question in the following way:

These laws were the work of the Federalist Party acting out of fear of "Jacobinism, admiration of the stern repressive measures taken by the British government -- and under the fervent conviction that the good

73 Peters, ed., Public Statutes at Large of the United States.
74 Schachner, The Founding Fathers, 459.
of the country required the rooting of all French sympa-
thizers. They were passed by Congress against the ad-
vice of Alexander Hamilton, and with the approval of
President Adams and with the warm benediction of Secretary
of State Timothy Pickering.75

There can be little argument with the first part of the
foregoing statement. A close examination of the votes on the
various bills shows that the Federalists warmly supported the
legislation, almost to a man. Rumors and the reports of rumors,
anonymous denunciations and their own fevered spirits convinced
the Federalists that a vast Francophile conspiracy was brewing
in the United States. Harrison Otis and Robert Harper consistent-
ly presented such fears.76 Likewise, at various times, the
Federalists referred to the English legislation in order to prove
that they were not establishing a precedent.77

Most historians agree with Miller that Hamilton was
opposed to the Alien and Sedition Laws. This widely accepted in-
terpretation, however, is open to question, and is primarily based
upon a letter written by him to Oliver Wolcott, who was the Sec-
retary of the Treasury.78 In this letter, Hamilton explained that

75 Miller, Crisis in Freedom, 72-73.
a cursory view of the provisions of the Sedition Act convinced him that some of them appeared to be highly exceptional. As such, more than anything else, they might produce civil war. In view of this, he hoped that the bill might not be hurried through.

"Let us not establish a tyranny. Energy is a very different thing from violence." 79

Such an interpretation of Hamilton's opinion does not seem to present the complete story. This letter is dated June 29, 1798. At that time, the proposed Sedition Bill was so worded that it constituted a virtual declaration of war on France, and even Hamilton, the archpriest of Federalism, was not ready for this. Consequently, it is no small wonder that Hamilton hoped that the bill would not be "hurried through."

Another point in question is Hamilton's motive in opposing the law in its original form. Was he concerned primarily with the national interest, or was he seeking partisan advantage? The answer seems to lie in this same letter to Wolcott in which he reveals one of his motives. "If we make no false step, we shall be

79 Ibid.

50 The Sedition Bill when introduced in the Senate on June 26, read:

That the government of the people of France and its colonies and dependencies, in consequence of their hostile conduct towards the United States shall be, and they hereby are declared to be enemies of the United States. . . . Lexington Kentucky Gazette, July 18, 1798.
essentially united, but if we push things to an extreme, we shall then give to faction body and solidity."\(^{51}\)

The fact that Hamilton favored some sort of Sedition legislation appears in his correspondence as early as April 1, 1798. In a letter to Timothy Pickering he stated, "it important to disarm a certain party of the weapons of calumny . . . ."\(^{52}\) Furthermore, after the Sedition Law was passed, Hamilton advocated a strict enforcement of it. In a letter to Jonathan Dayton\(^{53}\) in 1799, he wrote:

> Are laws of this kind passed merely to excite odium and remain a dead letter? Vigor in the executive is as least as necessary in the legislative branch. If the President requires to be stimulated, those who can approach him ought to do it.\(^{54}\)

In regard to the Alien Law, Hamilton's position is not quite as clear as could be desired. Nevertheless, there are some indications to show that he favored certain regulations of the aliens in the country. In a letter to Washington on May 19, 1798 he revealed his fears of a French uprising. He believed that the opposition to the administration was "ready to new-model our Con-

---


52 Ibid., 457.

53 Jonathan Dayton was a Representative from New Jersey who was serving as Speaker of the House at this time.

stitution under the influence or coercion of France, to form with
her a perpetual alliance, offensive and defensive, and to give her
monopoly of our trade by peculiar and exclusive privileges." 85
when the Alien Bill was under discussion in Congress, Hamilton sug-
gested to Pickering that this law should be so worded that it
would go easy on the property of merchants. This limitation was
introduced by Otis, and was included in the law as passed. 86

In spite of his foreign birth, Hamilton believed that
there should be strong immigration and naturalization laws. Al-
though no records exist of an opinion expressed by him in this
regard before the passage of the Naturalization Law, his position
was thereafter clearly set forth in 1802 in several of his arti-
cles:

They (immigrants) will bring with them the principles
of the government they leave, imbibed in their early
youth; or if able to throw them off, it will be in ex-
change for an unbounded licentiousness, passing as is
usual, from one extreme to another. . . . Their prin-
ciples with their language, they will transmit to their
children. . . . they will share with us in the legis-
lation. They will infuse into it their spirit, warp
and bias its direction, and render it a heterogeneous,
incoherent, distracted mass. 87

85 Ibid., 483.
86 Peters, ed., Public Statutes at Large of the United
States, I, 572.
87 John C. Hamilton, ed., The Works of Alexander Ham-
ilton, New York, 1851, VII, 772. This point of view was repeated
five days later in another article published in a newspaper, Ibid.
775-777.
In view of such an attitude, the Naturalization Law could hardly have proved distasteful to Hamilton unless he had preferred a more stringent one.

John Adams' writings indicate that Hamilton must be considered among those who are to share the responsibility for these laws. Adams recalled, in 1809, that Hamilton had written a letter in 1797 in which he advocated the passage of such measures. In this letter, directed to the more important Senators and Representatives, Hamilton, according to Adams, advocated the passage of an Alien and Sedition Law.

In light of all this evidence it seems that Hamilton's role in the passage of these measures should be reevaluated and that they were not enacted "against his advice."

President Adams' part in the passage of the Alien and Sedition Laws is no less difficult to determine. To what extent, directly or indirectly, he is responsible for them is a question that probably will never be conclusively answered. Although he never directly asked Congress for these measures, at times he did and said things which contributed to their passage. For example,

38 This letter, which Adams attributed to Hamilton, could not be found. However, of six laws that Adams attributed to Hamilton's initiative, five of them are ascertainable in Hamilton's writings. The one exception is the Alien and Sedition law.

on March 19, 1798 he sent a message to Congress in which he expressed the opinion that nothing short of war would settle the nation's problems with France. He concluded by saying: "In all your proceedings it will be important to manifest a zeal, vigor, and concert in defense of the national rights proportioned to the danger with which they are threatened." 90

This advice brought an immediate and extraordinarily vehement reaction from Congress. Another message which had an influence in solidifying Congressional opinion against France was the one in which he declared that the United States would never send another minister to France. 91

On another occasion, Adams made a statement which would seem to indicate that he favored the passage of such laws. In an address to the citizens of Baltimore on May 2, 1798, he said:

"Republics are always divided in opinion . . . . These are generally harmless . . . except when foreign nations interfere, and by their arts and agents excite and ferment them (division of opinion) into parties and factions. Such interference and influence must be resisted and exterminated, or it will end in America, as it did . . . in Europe, in our total destruction as a republican government and independent power." 92

90 Richardson, ed., Messages and Papers of the Presidents, I, 265.

91 Schachner, The Founding Fathers, 448-449.

There are, on the other hand, some facts which tend to indicate that Adams bears little of the responsibility for these laws. He was definitely not the decisive factor during his administration. For a long time, men like Wolcott and Pickering, who were directed by Hamilton, formulated the policy of his administration.93 It was these men and not Adams who were actually responsible for most of the legislation enacted by Congress.94 In his later life, Adams summarized his role in the passage of the Alien and Sedition Laws in this way:

Nor did I adopt his (Hamilton's) idea of an alien or sedition law. I recommended no such thing in my speech. Congress, however, adopted both these measures. I knew that there was need of both, and therefore I consented to them. But as they were then considered as war measures, and intended altogether against the advocates of the French and peace with France, I was apprehensive that a hurricane of clamor would be raised against them, as in truth there was, even more fierce and violent than I had anticipated.95

President Adams feared the explosive force that these laws would have on the public with good reason. Newspapers denounced them, country assemblies cried out against them, Congress was besieged with petitions demanding their repeal, and two states passed resolutions to counteract their effect. An examination of

93 Schachner, The Founding Fathers, 417.

94 James Madison even went so far as to compare Adams to a "puppet" whose strings were pulled by "the creatures around him." Gaillard Hunt, ed., The Writings of James Madison, New York, 1906, VI, 328.

This public response not only is interesting in itself, but is necessary to ascertain the relationship between the Alien and Sedition Laws and the Virginia and Kentucky Resolutions.
CHAPTER III

PUBLIC RECEPTION OF THE ALIEN AND SEDITION LAWS
AND THE PASSAGE OF THE VIRGINIA AND
KENTUCKY RESOLUTIONS

The Alien and Sedition Laws gave rise to an immediate hostile reaction in the Republican areas. In these bills the Republicans sensed a double threat to their existence. It was feared that the Federalists were closing the avenues of ordinary political propaganda in the crucial years before the presidential election of 1800. Moreover, the Republicans believed that the passage of these laws revealed a Federalist plot to alter the structure of the Republic in order to establish a monarchy in its place.

Some of the Republican leaders also foresaw an opportunity to use these laws as a weapon against the Federalists in the coming elections. Until this time, the Federalist Party had dominated the national legislature, a condition unacceptable to the Republicans. Most of the legislation passed had been tainted with its aristocratic and mercantilistic tendencies. The only solution, in the minds of the Republicans, was to win control of the government. A definite opportunity was at hand. Public
opinion was at a feverish pitch; it would not take much to crystal-
allize it against the Federalists.

The newspapers had followed the debates on the Alien and
Sedition Laws with great interest. Few of them had remained bi-
partisan for a very long period. In general, the administrative
journals backed the measures very staunchly while the Republican
newspapers denounced them as unconstitutional. The papers in
Kentucky were extremely hostile towards the laws, and a similar
hostility in Virginia was weakened only by the presence of a
strong Federalist minority there.

By mid-July, an attempt was made to direct this spirit
into channels of action. On July 24, a resolution was passed in
Clarke County, Kentucky, denouncing the Alien Law as "unconsti-
tutional, impolitic, unjust and disgraceful to the American
character". ¹ Another resolution passed in this county declared
that since there was sufficient reason to believe that the fun-
damental liberties of the people were being endangered, they
should band together to overcome such unconstitutional attacks.²

Action was also taken in Bourbon County of the same
state to undo the work of the Federalist-dominated national

¹ Lexington Kentucky Gazette, August 1, 1793.
² Ibid.
legislature. The laws were denounced in no uncertain terms as being "inhuman, unjust and unconstitutional." Furthermore, these resolutions intimated that if redress were not to be had by constitutional means, other methods might be expedient.

Other counties in Kentucky which joined in passing memorials against the Alien and Sedition Laws were Woodford, Franklin and Mercer. In Virginia, the counties of Caroline, Essex, Dinwiddie, Goochland, Spottsylvania, Ablemarle and Orange proposed memorials and passed resolutions which expressed their contempt for the measures.

It became apparent that this partisan, unofficial opposition was insufficient. Therefore, the Republicans sought some more formal legislative mode of disapproval. Their choice fell quite naturally upon state legislative enactment. It was only a decade earlier that the states had been considered completely sovereign under the Articles of Confederation, and in 1798 there were many who felt that final sovereignty had not been relinquished to the national government but still resided with the individual states.

3 Ibid., August 29, 1798.
4 Ibid.
The task of organizing this opposition was left up to Thomas Jefferson and James Madison. They were ably assisted by John Taylor of Caroline, Wilson C. Nicholas and John Breckenridge. John Taylor was a prominent Tidewater planter and lawyer of Virginia, recognized as an outstanding Republican leader since 1794 when he had published a pamphlet attacking the Federalists for passing certain laws favoring the mercantilistic elements of the population. Wilson Cary Nicholas was a neighbor, friend and political follower of Jefferson. His chief service at this time was to act as an intermediary in the negotiations with the various men who opposed these laws. John Breckenridge was a prominent lawyer of Kentucky who just then was serving as Speaker of the State House of Representatives.

Both Jefferson and Madison had expressed their disapproval of the Alien and Sedition Laws even before their passage. As early as May 20, 1798 Madison had written to Jefferson:

The Alien Bill proposed in the Senate is a monster that must forever disgrace its parents. I should not have supposed it possible that such an one could have been engendered in either house, and still persuade myself, that it can not be fathered by both.  

---

Jefferson, responding on June 7, wrote that in view of the action being taken on the Alien and Sedition Bill it seemed that the Federalists did not intend to observe the Constitution. In October of the same year, Jefferson recognized the fact that something must be done by the state legislatures since, in his estimation, these laws were "merely an experiment on the American mind to see how far it will bear an avowed violation of the Constitution." In this letter he expressed the fear that the Federalists would make the President's office life-time, if they were permitted to get away with it, and he feared they would get away with it because of the "dupery of which our countrymen have shown themselves susceptible".

Although there is no explicit evidence of collaboration between Madison and Jefferson in the drafting of the Virginia and Kentucky Resolutions, collaboration is indicated by certain omissions which occur in Jefferson's ledger. Jefferson customarily wrote Madison numerous notes and letters when both were in Virginia, and a record of these was customarily kept in the ledger. However, for the critical months directly after Congress passed the suppressive legislation that dismayed the Republicans, there is not a single entry to or from Madison. It is evident from an

10 Ibid., 284.
11 Ibid.
examination of a letter of October 26, when correspondence was re-
sumed, that Madison was completely aware of what Jefferson had
been doing in the meantime. Perhaps there were secret messages
and meetings, because it would be absurd to assume that Jefferson
had been acting alone in a case in which the future existence of
the Republican party was at stake.

From this point until the time of the introduction of
the Resolutions by Breckenridge in Kentucky, the historian is con-
fronted with conflicting theories as to what happened. This con-
fusion has been primarily the result of a letter that Jefferson
wrote in 1821 to John C. Breckenridge, son of the Kentucky
Speaker. In this letter, Jefferson acknowledged his authorship
of the Kentucky Resolutions and said that John Breckenridge was
present when they were drawn up. That Breckenridge was present
when they were drafted seems doubtful when we consider two factors.
First, a letter, which was written to Jefferson by Nicholas, shows
that the original plan had been to introduce the Resolutions in
the North Carolina Legislature. Nicholas states that a change of
spirit in North Carolina necessitated introducing them in Ken-
tucky.

12 Ibid., 257.
13 Ibid., 290-91.
14 Ibid., 281-282.
If Breckenridge, who was the Speaker of the House of the Kentucky Legislature, had been present during the drafting of the Resolutions, it seems unlikely that North Carolina would have been considered at all. Second, Breckenridge made extensive changes in the Resolutions before he presented them. If he had been present when they were composed, it is more than likely that his suggestions and changes would have been incorporated at that time. 15 Obviously, therefore, Nicholas, the intermediary, gave the draft of the Resolutions to Breckenridge while the latter was on a visit to Virginia. By the time he returned to Kentucky, public opinion there had already been prepared for their favorable reception by the Republican press. The state governor, James Gerrard, further set the stage by his opening address to the legislature on November 7, 1798. In this message he strongly asserted that there was an obvious need for protest against all unconstitutional laws passed by Congress. 16 Complying with his suggestion, a committee of three was organized to draw up resolutions to express such a protest.

On the following day Breckenridge introduced, on behalf of this committee, a set of resolutions patterned after those of


Jefferson directed against the "unconstitutional laws". They were the subject of debate for the next three days. Although there was not too much opposition to them, what there was, was very vigorous. Mr. William Murray of Franklin County, an excellent lawyer and an admirable orator, led the debate against them. John Breckenridge was the outstanding speaker who argued for them. The contributions of the other Representatives are not even recorded. On November 10 they were passed with only one dissenting vote. The Resolutions were then sent to the State Senate where they were unanimously accepted on November 13. Governor Garrard approved them three days later.

The first seven resolutions, as introduced by Breckenridge, were taken verbatim from those proposed by Jefferson. They were concerned primarily with declaring the Alien and Sedition Laws unconstitutional because Congress, in enacting them, had invaded powers delegated to the states. Of the seven, the first is generally recognized as the most important since it expressed the theory that the Constitution had established a compact form of government. It read as follows:

17 Breckenridge had asked a fellow representative, Caleb Wallace, to draw up the Resolutions but Mr. Wallace refused. Ethelbert Dudley Warfield, The Kentucky Resolutions of 1795, 1857, 147-148.

18 Ibid, 86-90.

19 Ibid., 96-97.
That the several States composing the United States of America, are not united on the principles of unlimited submission of their General Government; but 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 whenever 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; that this 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 INFRINGEMENTS AS OF THE MODE AND MEASURE OF REDRESS.20

The eighth resolution as written by Jefferson was not included in the Breckenridge list. It had provided:

... 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 written 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, absolutely and unlimited of whoever might exercise this right of judgment for them....21

The historical significance of this statement lies in the fact that it is the first known instance of the proposal of the theory

20 Elliot, ed., The Virginia and Kentucky Resolutions, 15-16.

21 Ford, ed., The Writings of Thomas Jefferson, VII, 301.
of nullification. Evidently, Breckenridge felt that the assertion was too strong or he personally did not agree with it. In his own eighth resolution he proposed that Congress repeal the unconstitutional and obnoxious measures and said nothing about nullification. 22 However, a second set of Kentucky Resolutions of February 22, 1799 did incorporate this Jeffersonian concept. 23

As soon as the Resolutions of November, 1798 had been passed, steps were taken to inform the other states of the action. For this purpose, a thousand copies of them were printed. Of these, fifty were given to the Governor to be sent to the other states and the Representatives in Congress, and the remainder were distributed among the members of the Kentucky Legislature. 24

In the meantime James Madison, working independently, had prepared separate resolutions which he sent to John Taylor of Caroline, whose known sentiments and ability marked him as the most suitable person for the work of securing their adoption by the Virginia Legislature. 25 The debate over them involved far more than simply the question as to whether the Alien and Sedition Acts were unconstitutional. It brought into view, in a

22 Elliot, ed., The Virginia and Kentucky Resolutions, 17-19.
23 Ibid., 19-20.
24 Warfield, The Kentucky Resolutions, 99.
broad way, the contrasting opinions on the nature and character of the Constitution and the Union, especially the relationship between the states and the Federal Government.

The Virginia Legislature, unlike that of Kentucky, contained a strong bloc of capable Federalists who struggled to prevent the passage of the Madison Resolutions. Keith Taylor of Prince George County was the leader of this group. His speeches were marked with rhetorical devices calculated to stir the emotions and arouse the prejudices of his hearers, rather than to influence their calm reason. At one point in the debate, he declared that the Alien Law was necessary to eliminate the influence of French aliens, since they had already attempted to incite the slaves to insurrection. He reminded his listeners:

In that common calamity the ranks of society will be confounded; the ties of nature will be cut asunder; the inexorable and blood-thirsty negro will be careless of the father's groans, the tears of the mother, and the lamentations of the children.

The Resolutions came to a vote on December 21 after six days of debate. They were approved by a vote of 100 to 63 in the House, and 14 to 3 in the Senate.

The Virginia Resolutions summarized in the brief compass of a few hundred words all the grievances which the Republicans

26 Warfield, The Kentucky Resolutions, 103.
27 Simms, Life of John Taylor, 79.
28 Ibid., 89.
had against the manipulation of the Constitution by the Federalists. Beginning with a declaration of loyalty to the Union, they proclaimed that the states were obligated, as creators and members of the Federal Compact, to oppose and correct any evils which might develop. The powers abused were then enumerated. First, there had been a decided effort to extend the privileges of the general government by "forced constructions" of the Constitution and to stretch certain general grants of power so as to destroy the meaning and effect of the specific enumerations. In accordance with the Resolutions, such action would inevitably "transform the present Republican system of the United States into an absolute or at best a mixed monarchy". Second, Congress had not only employed a power nowhere granted when it passed the Alien Law, but it had united executive and judicial power in such a way as to subvert the principles of free government. The third and last objection was to the Sedition Act, which had been passed in direct violation of the amendment which guaranteed freedom of the press to the people of the United States. In the conclusion of the Resolutions there was offered an invitation to the states to join with Virginia in declaring these laws to be unconstitutional, and to cooperate otherwise in preserving the liberties of the states and the people. 29

29 Elliot, ed., The Virginia and Kentucky Resolutions, 5-6.
From the above, it is evident that Madison’s Virginia Resolutions were different in character from those originally drafted by Jefferson. They clearly showed Madison’s uncertainty about the prudence of the nullification theory as enunciated in the original draft of the Kentucky Resolutions of 1798. This uncertainty is best expressed in a letter he wrote to Jefferson shortly after the passage of the Virginia Resolutions:

I have not seen the results of the discussions at Richmond on the Alien and Sedition Laws. It is to be feared that in their zeal they may forget some considerations which ought to temper their proceedings. Have you ever considered thoroughly the distinction between the power of the State and that of the Legislature, on questions relating to the federal pact. On the supposition that the former is clearly the ultimate Judge of infractions, it does not follow that the latter is the legitimate organ especially as a Convention was the organ by which the compact was made. This was the reason for using the general expressions that would leave to other States a choice of all the modes possible of concurring in substance, and would shield the General Assembly against the charge of usurpation in the very act of protesting against the usurpations of Congress.30

Seven states of the Union quickly responded to the appeals from Virginia and Kentucky, but not in the way that had been anticipated. There was not one favorable reply. Delaware declared the Resolutions "a very unjustifiable interference with the General Government".31 Rhode Island felt that "many evil and fatal consequences ... may flow from the very unwarrantable reso-

30 Hunt, ed., The Writings of James Madison, VI, 328-329.
31 Elliot, ed., The Virginia and Kentucky Resolutions, 9.
New Hampshire voiced an opinion that was to come to be most commonly accepted: "the State Legislatures are not the proper tribunals to determine the constitutionality of the laws of the general government – that the duty of such decision is properly and exclusively confided to the judicial department." What developed then was, in part, due to this hostile reception on the part of the states. To have dropped the matter at this stage would have been a tacit admission of error. Neither Madison nor Jefferson was disposed to do this. Jefferson once again assumed the leadership, and on August 23, 1799 wrote a lengthy letter to Madison. This communication is extremely significant, for it reveals more clearly than any other document the specific roles played by Madison and Jefferson in reasserting the doctrine of 1798. It is also important in revealing the extremes that Jefferson was considering. Although a whole year had elapsed since the crisis over the Alien and Sedition Laws had originated, Jefferson still felt very strongly about the problem. This attitude is clearly revealed in the above-mentioned letter to Madison:

32 Ibid., 10.
33 Ibid., 14.
But determined were we to be disappointed in this (the Federal government correcting its abuses) to sever ourselves from that union we so much value rather than give up the rights of self government which we have reserved and in which alone we see liberty, safety and happiness.35

Shortly after receiving this letter, Madison met with Jefferson to discuss his proposals and to map a plan of action. Madison was evidently able to temper the extremes to which Jefferson was willing to go. This is indicated by a letter addressed by Jefferson to Nicholas, dated September 5, 1799. In it, he repeated the same proposals, but omitted the idea of separation from the Union.36 The extent of Madison's influence over Jefferson is more forcefully indicated in another letter directed to Nicholas in which Jefferson almost completely reversed his position: "we should never think of separation but for repeated and enormous violations, so these when they occur will be cause enough of themselves".37

These proposals, as modified, were sent to John Breckenridge, Speaker of the Kentucky House. With a limited amount of debate they were passed by the Kentucky Legislature, and are called the Kentucky Resolutions of 1799.

These Resolutions were not as lengthy as those of 1798. They began by denouncing the states which had made "uncandid in-

35 Ibid.
36 Ibid., 390-391.
37 Ibid.
situations derogatory of the true character and principles of the people of their state (Kentucky)". Feeling that silence on their part would mean acquiescence to what other states had said in answer to the Resolutions of 1798, the Kentucky legislators deemed it necessary to issue the Resolutions of 1799. After attesting to Kentucky's attachment to the Union, the legislators concluded the Resolutions by registering a solemn protest against the unconstitutionality of the Alien and Sedition Laws.

The portion of the Resolutions of 1799 that was to be recalled long after the memory of the remainder had faded is:

That the several states who formed that instrument (Constitution) being sovereign and independent, have the unquestionable right to judge of the infraction; and that a nullification of those sovereignties, of all unauthorized acts done under color of that instrument is the rightful remedy.

It is both strange and unfortunate that this clause containing the word nullification should have appeared in these Resolutions. Strange, because it had been deleted from those of 1798 even though it had been included in Jefferson's original draft. Now, when Jefferson had avoided the expression, it was included by the legislature. Unfortunate, because the Republicans had already won the major part of the battle they had been


39 Ibid. Underlining is that of the writer of this thesis.
waging against the Alien Laws; this was almost anticlimactic to the struggle. Moreover, the seed was thus planted for the South Carolina nullification controversy and the secession of the Southern States.

Although there is no conclusive evidence to prove that Jefferson was the author of the Resolutions of 1799, most competent historians credit him with their authorship. This is due to the close resemblance between them and the letters that Jefferson had written to Madison and Nicholas.

Meanwhile Madison, who had become a Representative in the Virginia Legislature, drafted a second set of resolutions to be issued by that body. Madison's report, like that of Kentucky, reiterated the arguments of the preceding year and attempted to refute the accusations contained in the replies of the other states by a point by point exposition of the Virginia Resolutions of 1798. In this exhaustive examination he explained that they could not be unconstitutional, as argued by some of the states. In his words, they were "expressions of opinion, unaccompained with any other effect than what they may produce on

---

40 A rough draft of the Resolutions of 1798 may be found in the writings of Jefferson; there is no rough draft for the Resolutions of 1799.

41 Hunt, ed., The Writings of James Madison, VI, 332-406.
opinion by exciting reflection".42

The Virginia and Kentucky Resolutions had been engendered by the Republicans in an attempt to negate certain policies of the Federalist-dominated government. Their victory in the election of 1800 was, in part, due to their efforts in this regard. This election marked the end of the Federalist reign in office and the beginning of the career of a new party which has existed until the present time. Nevertheless, it is not for this fact that the Resolutions are principally remembered. Rather, they are most frequently recalled because they contained one word: Nullification. Had this word been omitted, it is more than probable that the Resolutions would have been relegated to a position of insignificance in the history of the development of the United States. It remains to be determined whether the word, nullification, as found in the Resolutions, had the same connotation for the authors as has been attributed to it in later history.

42 Ibid., 402.
CHAPTER IV

SIGNIFICANCE OF THE VIRGINIA AND KENTUCKY RESOLUTIONS

Since the most impelling association that has come to be connected with the Virginia and Kentucky Resolutions is the theory of nullification, no interpretation of them is complete without an investigation of this factor. In subsequent historic development, it is this theory which has given the Resolutions their actual significance. Inasmuch as a later era has thus evaluated the importance of these enunciations, it is pertinent to determine whether or not their authors placed a similar emphasis and interpretation upon this point. This can be done only by reviewing the circumstances and major ideas that gave birth to the Resolutions themselves.

The Virginia and Kentucky Resolutions were an outgrowth of the Republican attempt to defend individual liberty. In the estimation of the Jeffersonians, the Federalist-sponsored Alien and Sedition Laws were intended to curb this liberty without due reason. Right demanded that appropriate steps be taken by them to eradicate this obnoxious legislation. The Republicans sensed a Federalist attempt to establish a strong national government, almost monarchical in implication,
which would usurp the rights of the individual states. Superimposed upon their wrath and indignation directed toward the Alien and Sedition Laws was the consuming anxiety that this legislation might set precedents for similar future measures. It was their responsibility to attack and repeal these enactments in order to prevent any possibility that the Federalists might implement their onerous program.

Not only did the Republicans attack and attempt to undermine the Alien and Sedition Laws by means of the Resolutions, but also they made use of the latter as part of the party platform in the election of 1800. By means of them, Republican allegiance to the common man and to states' rights was shrewdly advertised. What better banner could they champion?

With these thoughts in mind, it is now more nearly possible to determine the intended meaning of the nullification theory as expounded by the original authors. However, the student must proceed with caution in treating such a controversy as this which derives its origin from differences of opinion. There are no calm, clear-cut judicial declarations; instead, party bias understandably colors each judgment. For this reason, an interpretation such as this has no room for dogmatic statements. The obvious course is to investigate the claims of all who speak with candor and to sift from the great store of material some little that will serve to instruct, even though it ultimately will fail to alleviate all doubt.
Of the original framers of the Resolutions, James Madison was the only one who survived long enough to leave testimony of what he actually intended in the use of the expression, nullification. In his writings, he speaks with conclusiveness in reference to his own early intentions and actions, and although his interpretations of his contemporaries' ideas do not carry the same authoritativeness, they obviously present a significant contribution to the search for valid information.

Madison was still alive when the nullification controversy of 1832 occurred, and he took an intense interest in it. During this period, he wrote copiously to such men as Nicholas P. Trist, a public figure noted for his actions in the relations between Mexico and the United States; and to Edward Everett, the senator from Massachusetts. In these letters he gave full expression to his own views. For this reason, they are of great value in determining his intentions in drafting the Resolutions for Virginia. In effect, he said that he had never contemplated that a single state of the Union might attempt to prevent the enactment and enforcement of a law of the United States. The action of South Carolina was not justified, in his view, by the Resolutions. To Madison, the pronouncement made by Virginia in 1798 was only a declaration of opinion by the State Legislature.¹

¹ Hunt, ed., The Writings of James Madison, IX, 445.
The object of Virginia was to vindicate legislative declarations of opinion; to designate the several constitutional modes of interposition by the states against abuse of power, and to establish the ultimate authority of states as parties to and creatures of the Constitution to interpose against the decisions of the Judicial as well as the other branches of the Government....

During the nullification controversy in South Carolina Madison wrote:

I do not consider the proceedings of Virginia in 98-99 as countenancing the doctrine that a State may at will secede from its constitutional compact with the other states. A rightful secession requires the consent of the others, or an abuse of the compact absolving the seceding party from the obligation imposed by it.

These are but two of the many expressions of such a sentiment that Madison frequently made. He openly avowed that he was hostile to the nullification doctrine and defended himself and his writings from any false interpretation. It must be remembered, however, that in 1796 Madison was more strongly attached to the idea of a firm national union than was any of the others concerned in the Resolutions. This was, no doubt, due to the fact that he had been one of the foremost agents in the convoking of the Constitutional Convention. Once it began its sessions, he worked assiduously for a strong constitution. And when the Convention was over, he devoted his tireless efforts to assis-

---

2 Ibid., 496.
3 Ibid., 495.
4 For other letters see: Ibid., 410, 471, 479, 488, and 513.
ting in the drive for its ratification. Other facts which must be remembered are that in 1796 Madison was more conservative in his Resolutions than was either Jefferson or Breckinridge, and that he was in the very innermost councils of the party and knew, as few men could, what the opinions of his associates were.

Jefferson's position is much more difficult to evaluate because he left behind so many conflicting statements and pronouncements. Each of these has been subjected to various interpretations and, consequently, from each, divergent conclusions have been drawn. To one group of historians, Jefferson is the father of secession; to another, he is a truly great nationalist who continually worked for the strengthening of the central government.

The historians who claim that Jefferson favored secession have several strong arguments to substantiate their position. First, Jefferson often expressed his belief that governments are based on a compact. He became convinced of this fundamental idea early in his political life. The best known expression of this theory was made by him in the Declaration of Independence: "Governments are instituted among men, deriving their just powers from the consent of the governed...."5 This position was reaffir-

med and developed in a long letter to Major Cartwright on June 5, 1824. In this letter Jefferson denied that the States were subordinate to the national government, but rather that,

They are coordinate departments of one simple and integral whole. To the state governments are reserved all legislation and administration in affairs which concern their own citizens only, and to the federal government is given whatever concerns foreigners, or the citizens of other states; these functions alone being federal.

This position was held by most of the political theorists of the period. To them, divided sovereignty was not the unacceptable tenet that it was then and later became to some.

To state that Jefferson was a firm believer in the compact theory presents no new knowledge. However, it gives us the opportunity of reviewing his opinions regarding the dissolution of such a compact. Since the government was instituted by men and derived its power from their consent, it would seem to be a logical corollary that they also had the power to break the compact. Would Jefferson support this corollary? Would he support secession?

The historians' answers to this question illustrate the two possible solutions; an examination of this information will at least reveal the arguments for the two schools of thought.

---

6 John Cartwright was an English political reformist who earned his title, Major, in the Nottinghamshire militia.

7 Elliot, ed., The Virginia and Kentucky Resolutions, 65-66.

8 Ibid.
The position of the secessionist school is that Jefferson laid the foundation for such an idea when he wrote the drafts for the Kentucky Resolutions of 1798. According to its position, these drafts, which use the word, nullification, must be evaluated on the basis of their contents. Furthermore, it members point to a statement in which Jefferson remarked that other measures would be expedient if the situation got worse. For conclusive proof, they cite a letter which he wrote to James Madison in 1825. In this communication, after reaffirming his belief in the compact theory of government, he continued by saying, "If there is to be a government of unlimited powers, Virginia will make the break (secession) but only under that situation and until then, it will patiently wait."

Von Holst, who represents the extreme in the secessionist position, says this of Jefferson:

Ambition was the sovereign trait in his character. He was always ready to sacrifice much of his favorite theories to his feverish thirst for power and distinction, the more especially as his eminently practical instinct caused him often to doubt the tenableness of his ideal system. Moreover, as he, partly from interest and partly because misled by his idealistic reveries, conceded his ambition under the mask of the greatest simplicity, stolcal indifference, and even of disinclination to accept any political honor or dignity, so, too, his conscience was not precisely what would be called tender in the weighing and measuring of words, whether his own or those of others.11

10 Ibid., X, 352.
On the other hand, there are numerous evidences to demonstrate the opinion that Jefferson did not favor secession by a single state. Even before he drafted the Resolutions, Jefferson wrote, in answer to a query from John Taylor in regard to the question of secession:

If to rid ourselves of the present rule of Massachusetts and Connecticut we break with the union will the evil stop there? Immediately, we shall see a Pennsylvania and a Virginia party arise in the residuary confederacy, and the public mind will be distracted with the same party spirit. What a game too will the one party have in their hands, by eternally threatening the other that unless they do so and so, they will join their northern neighbors.... Seeing, therefore, that an association of men who will not quarrel with one another is a thing which never yet existed from the greatest confederacy of nations down to a town meeting or a vestry; seeing we must have somebody to quarrel with, I had rather keep our New England associates for that purpose, than to see our bickerings transferred to others.12

Additional material which supports this opposite position is found in a statement Jefferson made when an insurrection in Pennsylvania was suggested as a means of opposing the Alien and Sedition Laws:

Nothing could be so fatal. This is not the kind of opposition the American people will permit. ...keep away all show of force, and they will bear down the evil propensities of government, by the constitutional means of election and petition.13

In the long letter (to Major Cartwright) which was cited earlier, Jefferson explained his ideas in reference to the

13 Ibid., 356.
powers possessed by the national and state governments. In his estimation, each government was given certain authority over definite matters:

But ... if the two departments should claim each the same subject of power, where is the common umpire to decide ultimately between them? In cases of little importance or urgency, the prudence of both parties will keep them aloof from the questionable grounds; but if it can neither be avoided nor compromised, a convention of the States must be called, to ascribe the doubtful power to that department which they think best. 14

Certainly, there are two conflicting views contained in the writings of Jefferson. However, certain factors, such as the circumstances under which the statements were issued, the urgency of the situation, and Jefferson's impetuous nature make it necessary to exercise cautious judgment. Allowances ought to be made for Jefferson who, according to Madison, had a tendency to make stronger statements than he intended. 15

In spite of the framers' possible intentions, the permanent significance of the Resolutions is that they gave definite form to the concept that the Constitution is a compact in which both states and Federal Government are given certain powers. Furthermore, they gave new life to the belief in state sovereignty. From these convictions, there logically evolved the theory that the state, on its own authority, had the power and right to

---

15 Hunt, ed., The Writings of James Madison, IX, 479.
nullify federal legislation and, if it so desired, withdraw from the Union. From this time on, these theories showed great vitality since they fitted nicely into the popular prejudices and local interests of the people. Federalist New England adopted these ideas during the troublesome period of the War of 1812. South Carolina justified nullification in 1832 on the same grounds. Even the resort to secession in 1860 and 1861 was a logical consequence of the doctrine promulgated in these Resolutions.
CHAPTER V
CONCLUSION

The purpose of this thesis has thus been discharged. It has been the intention of the writer to examine and evaluate the Alien and Sedition Laws and the Virginia and Kentucky Resolutions in order to point out their combined as well as their independent effect on the development of United States policy.

Separately, these two sets of measures stand out because of the many precedents and effects that have been attributed to them. The Alien and Sedition Laws, because of their contents, are in a class by themselves. Although the Naturalization Act merely extended the period of naturalization from five to fourteen years, the other three acts were much more startling in nature. The Alien Acts, which depended solely on executive action without judicial trial, a procedure which contradicted the Bill of Rights, were extremely harsh on aliens. The Sedition Act, which characterized the extremes that the Federalists were considering, made it a crime "to defame", whether there be truth or not in the statement made. Undoubtedly, the framers of the Espionage Act of 1917 learned something from this act.
On the other hand, this legislation can not be totally condemned. The country was in a fever of excitement over the possibility of war with France. It was during this period of anxiety that the laws were passed.

However, it is not for this reason that the Alien and Sedition Laws have been assigned to an important position in our early history. Rather, it is because they were the primary factor in bringing about the Virginia and Kentucky Resolutions. The Republicans viewed the Federalists' work as an obvious attempt to entrench themselves in power by choking off criticism. They feared that a one party system, and possibly monarchy, would result unless a properly guided counterattack was launched.

It was this fear that led such men as Jefferson and Madison to set the machinery into operation which would negate the Federalist action. Both of these men realized that unless appropriate action was taken their cause would be defeated. Jefferson supplied the necessary leadership in this time of crisis for the Republicans. He drafted a preliminary set of resolutions which thoroughly denounced the Alien and Sedition Laws. These resolutions were revised and then introduced into Kentucky. Madison played an important role in penning the more moderate resolutions which were adopted by Virginia. Unfavorable reaction to these required that another set be drafted in the hope that they would nearly reflect the original position taken by Jefferson. That the Republicans succeeded in their undertaking is seen in
their success in the election of 1800. Perhaps their only intention had been to weaken the Federalist Party, but the permanent significance of the Resolutions is that they gave definite form to the compact theory of government and the doctrine of nullification and, according to some, prepared the way for secession.
CRITICAL BIBLIOGRAPHY

I. PRIMARY SOURCES


In these volumes, there are contained the diary, numerous letters, newspaper articles and documents that John Adams wrote. They were essential in evaluating the part he played in the passage of the Alien and Sedition Laws.


In order to obtain a complete picture of the Alien and Sedition Laws, it is advisable to examine the activities of Congress which led to their passage. Unfortunately, the historian can't consult the complete volumes of the Congressional Record since this series dates only from the latter part of the eighteenth century. The best work concerning congressional activities is the *Annals* which are inaccurately and inadequately recorded.


William Cobbett, who was one of the most vindictive editors of the period, wrote numerous editorials which reflected and formulated public opinion.


This is an extremely commendable volume that the American history student should have available for ready reference. It is a collection of the important documents of the era and also includes an editorial comment and an annotated bibliography.

As the title indicates, this work contains a facsimile of the original drafts of the Resolutions. Mr. Elliot also includes other pertinent material, such as the responses of the seven states to these Resolutions. It is an invaluable work done under capable editorship.


This collection of Jefferson's letters is necessary to the study of Jefferson's role in drafting the Kentucky Resolutions. The primary limitation of this work is that it does not include all of the letters; some were not known and others were probably not considered pertinent by the editor.


Washington's views in the years between 1798 and 1799 are important to a complete understanding of the political developments. He endeavored to remain aloof from the two extreme parties, but these writings give some indication of his opinions.


These volumes represent the first attempt made to collect the writings of Alexander Hamilton. They are indispensable in determining and evaluating his position in reference to the Alien and Sedition Laws.


The part that Madison played in drafting the Virginia Resolutions can be measured with the aid of these volumes only. Furthermore, they must be consulted in an interpretation of his Resolutions.


Rufus King's correspondence was useful in evaluating the Federalist attitude. Since he was serving at the Court of St. James during the passage of the Laws, his letters are significant in determining the attitude of a Federalist who had an opportunity to judge apart from the situation.

This second edition of Hamilton's works was used because it contains, in addition to letters written by him, some that he received. Seen in this context, his correspondence is more easily understood.


The role of Harrison G. Otis, who was one of the most ardent Federalists, is adequately presented in this account. It contains the letters which he wrote in support of the Laws and gives an insight into his importance in their passage.


This is a one-volume collection of newspaper articles and editorials from the prominent newspapers between the years 1776 and 1923. There are several articles which concern the Alien and Sedition Laws. The articles are predominately critical of the Laws and are illustrative of the extremes to which the press went in the expression of their hostility.


Philip Freneau, who has been called the "Poet of the Revolution", wrote many poems which were inspired by the Federalist measures. One of his best known poems, "The Jay Treaty", is a lament over the folly of the treaty; it is incorporated into this thesis.


This volume is a collection of the acts, treaties and executive proclamations during the period covered by this thesis. It is valuable because it had a verbatim copy of the Alien and Sedition Laws. It is useful also in determining the other partisan legislation passed during this period.


This is the standard work for the Presidents' correspondence. Although the same messages and papers are usually contained in the individual works of the Presidents,
this set organizes the correspondence for more readily accessible reference.

II. SECONDARY SOURCES

A. BOOKS

Allen, Gardner, W., Our Naval War with France, Boston, 1909.

Although the subject of this book is the undeclared naval war between the United States and France, it sets forth our relations with France as background information.


This interesting book discusses the Laws and Resolutions as part of the total history of the United States and therefore gives the broader perspective necessary for understanding. It contains a wealth of material which is presented in an interesting and entertaining fashion.


This is the accepted secondary source for this period in American History. Although it has not been supplemented by more recent works, it has not been replaced.


The factors that led to the development of political parties, with particular emphasis on Republican origins, is the subject of this book. Charles Beard treats his theme with careful and capable analysis.


This is the only extensive monograph on the Jay Treaty, and its study makes possible a detailed knowledge of the Treaty's significance concerning our relations with France and England. It is one of the many distinguished works by Bemis.

Bleyer, William G., Main Currents in the History of American Journalism, Boston, 1927.
Until the publication of Frank Mott's book, this was the recognized work on American Journalism and it remains a useful reference. Its primary value is that it directs attention toward the newspapers of the period and gives an insight into their attitudes and influence.


Since there are no government statistics on immigration until 1820, it is difficult to determine the exact figures for this period. Hansen has done a commendable job in estimating these numbers in addition to presenting a historically sound account of the reasons for the migration. His treatment of the Alien Laws, as they affected immigration, provides a slightly different slant from the traditional view.


Hazen's thorough investigation of popular opinion between 1759 and 1800 discloses the fluctuations in the people's attitude toward France. He shows that opinion was greatly influenced by the course of the French Revolution and its aftermath.


Included in this work is an extensive treatment of the Laws and the Resolutions, considered from a constitutional viewpoint. Hockett supports the constitutionality of both.


An extensively detailed study, such as this, is especially recommended for its treatment of the prevailing social conditions of the period. The well chosen bibliography offers a wide selection of leads to primary sources.


The Democratic-Republican Societies played a vital role in activities between 1797 and 1798. Link's book is the only extensive treatment of their role.

Of the recent biographies of Jefferson, this work is praiseworthy for its objectivity and readability.


This widely recognized volume includes a constitutional interpretation of the Laws and Resolutions.


Matthew Lyon was the only prominent Republican who was punished under the Alien and Sedition Laws. This biographical account presents a vivid picture of the effects of the Laws.

Miller, John C. *Crisis in Freedom*, Boston, 1951.

This is the only extensive secondary treatment of the Alien and Sedition Laws. As is sometimes the case in a secondary work, the author has an axe to grind. Miller believes that the only motive behind the Laws was a partisan one.


This is an unusually sound and interesting biographical treatment of the life and work of John Jay. Since Jay's role in the diplomatic negotiations with England was pertinent to this study, the biography is highly informative.


The author is to be commended for his evaluation of the work done by William Pitt and the action taken by England during the French Revolution.


The problems and conditions facing the United States during its first twelve years as a nation, and the contributions made by the country's leaders are the theme of this volume. It combines sound scholarship with readability.


Although primarily concerned with the work of John Taylor, the book presents a thorough analysis of the passage of the Virginia Resolutions and Taylor's part therein.

Van Holst tenaciously supports the theory that Madison and Jefferson meant in the term, nullification, exactly what South Carolina maintained. Although he is extremely opinionated in his criticism of Jefferson, his treatment provides a valuable account of all the arguments used by the "Secessionist School".


That this book has been widely accepted and freely quoted in other texts is probably due to its existence as the only exhaustive study of the passage of the Kentucky Resolutions. Since it is undocumented, its primary value in this paper is to provide an overall picture and to serve as a point of departure for the consultation and organization of details found in primary sources.

B. ARTICLES


In addition to the opinions of such men as Hamilton, John Adams, and Patrick Henry who opposed the Resolutions, this article contains the unfavorable responses of the State Legislatures which answered the action of Virginia and Kentucky.


The action taken by the Federalists against certain Republican editors who violated the Sedition Acts caused a heated response by the Republicans. Anderson's brief but well annotated discussion of the Federalists' enforcement of the Laws gives an insight into some of the particular cases and difficulties encountered in their enforcement.

This is a widely accepted historical monograph of Monroe's diplomatic mission to France from 1794 to 1796. It provides a chronological account of Monroe's activities in France and presents a clear picture of his attitude toward the French Revolution. Federalist reaction to Monroe's activities during this mission is included in this extensive study.


Channing attempts to prove that Breckenridge was present when Jefferson drafted the Kentucky Resolutions. Selected passages in letters written to Wilson Nicholas by Breckenridge are offered in support of this argument. The article actually offers an interpretive conclusion rather than direct proof.


This is an unusually interesting discussion of Jefferson's ideas concerning nullification and the social compact. According to Fisher, Jefferson was radical in his belief concerning the social compact to the extent that he held that it was binding only on that generation. New problems and conditions faced by subsequent generations would require or at least permit them to form a new government. Nullification, then, would be the logical prelude to the formation of such a new government.


This brief study, based on public utterances, newspaper articles and records of public meetings, shows that the pro-French attitude of many United States citizens was influential in preventing a war with France.


In this discussion of early political parties and the causes for their development, Libby Concludes that the Alien and Sedition Laws were the outstanding and almost the only cause for the development of political parties.

Public opinion in Philadelphia, which was then the nation's capitol, was in the last analysis hostile to the Sedition Laws. This conclusion and opinion toward the other main issues of the period are derived from newspaper articles, letters and records of public meeting.

III. NEWSPAPERS

Lexington Kentucky Gazette, 1797-1799.

Philadelphia Gazette, January-December, 1798.

Philadelphia National Gazette, May-June, 1798.
APPROVAL SHEET

The thesis submitted by John Arthur Russell has been read and approved by three members of the Department of History.

The final copies have been examined by the director of the thesis and the signature which appears below verifies the fact that any necessary changes have been incorporated, and that the thesis is now given final approval with reference to content, form, and mechanical accuracy.

The thesis is therefore accepted in partial fulfillment of the requirements for the degree of Master of Arts.

Date: 1/1/55

Signature of Adviser: [Signature]