

The US Suffered Through Turmoil in '98 - 1798, That Is

by Jeff Jacoby, Boston Globe Columnist, 12/28/98 (Guest Commentator)

So shocking were the president's deeds, so extreme were his opponents, so furiously did partisan passions roil the public, that by the end of '98 some of the nation's most eminent leaders were questioning whether America's experiment with constitutional democracy was coming undone.

No, not the Clinton scandals. The year was 1798. John Adams was in the White House and the United States was undergoing an agony of political turmoil. It was a bitter time, but it produced two of the most remarkable statements on liberty and limited government in our history - the Kentucky and Virginia Resolutions of 1798.

Americans were sharply divided over a host of issues that year, none more so than US-French relations. The Federalists, who controlled the presidency and both houses of Congress, deeply mistrusted the French revolutionaries and refused to support them when France went to war with Britain. Republicans led by Thomas Jefferson were sympathetic to the French cause, which they identified with America's own revolt against royal abuse two decades earlier. The Jeffersonians denounced Adams and the Federalists as "monarchists" and "Tories" - denunciations echoed by a growing population of anti-British immigrants.

Angered by Washington's neutrality, France began seizing American vessels. US diplomats in France were snubbed. A scandal erupted - the famous XYZ Affair - when agents of the French foreign minister, Talleyrand, demanded a bribe from President Adams's emissaries. Federalists were outraged; war fever swept the country. There were rumors that France was planning an invasion - and that Vice President Jefferson, whose Republican supporters were violently condemning the federal government, would join the invaders and overthrow the Adams administration. In this superheated atmosphere, Congress and the president enacted a package of grotesquely unconstitutional laws. The Alien Enemies Act empowered the president to jail or expel without trial any foreigner he deemed "dangerous to the peace." The Sedition Act prohibited all criticism of federal officials made "with intent to defame." Just seven years after the ratification of the First Amendment, editors, printers, and politicians were hauled into court and sent to prison for the crime of opposing the president.

Jefferson and James Madison - who called the Sedition Act a "monster that must forever disgrace its parents" - resolved to strike back. Knowing that a Supreme Court fight would lose (the bench was dominated by Federalists), they decided to attack through the state legislatures.

Working with allies in Kentucky and Virginia, Jefferson and Madison arranged for each state's general assembly to adopt a statement protesting the new laws. Jefferson drafted the Kentucky resolution, which was passed on Nov. 16, 1798. Madison wrote the Virginia resolution, which was adopted on Christmas Eve.

"Resolved," the Kentucky Legislature declared in its opening paragraph, "that whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force." Supreme authority in America, it argued, was held not by the federal government but by the people and the states, and Congress and the president had only those powers clearly delegated to them by the Constitution. The Alien and Sedition Acts were intolerable above all because the federal government had no right to enact them. In the 20th century, the 10th Amendment has been largely ignored, but in the Kentucky Resolution, Jefferson quoted it repeatedly:

"It is true as a general principle, and is also expressly declared by one of the amendments to the Constitution, that `the powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively, or to the people.'" Nothing in the Constitution gave federal officials any right to interfere with freedom of speech or the press, or to exercise any jurisdiction over aliens.

"Therefore, the act of Congress passed on the 14th day of July, 1798 ... is not law, but is altogether void, and of no effect."

The Virginia Resolution was also blunt. Congress and the president, Madison wrote, have only the powers "enumerated in that compact [the Constitution]; and that in case of a deliberate, palpable, and dangerous exercise of other powers not granted by the said compact, the states ... have the right and are duty bound to interpose for arresting the progress of the evil."

These resolutions weren't empty theory. They were a forceful defense of freedom, and a reminder that when governments are allowed to infringe the liberty of A, it is only a matter of time before they move on to B's.

"The friendless alien has indeed been selected as the safest subject of a first experiment," declared the Kentucky resolution, "but the citizen will soon follow - or rather has already followed, for already has a Sedition Act marked him as its prey."

Jefferson and Madison were fearful, as more Americans should be today, of allowing power to be concentrated in the central government. They won the battle: Americans came to hate the Alien and Sedition Acts, and the Federalists were thrown out in the election of 1800. But did they win the war? In our day, the federal government has grown monstrous, strangling Americans' freedom through endless regulations, restrictions, and taxes. The bicentennial of the Kentucky and Virginia Resolutions reminds us how much we have lost - and points the way to win it back.

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