

THE KENTUCKY AND VIRGINIA RESOLUTIONS

1798

So bitter were the political differences between the Federalists and the Republicans in the 1790 that the late historian Page Smith wrote in his *People's History of the Young Republic* that it was "most fortunate that Jefferson and the Republicans triumphed" in the election of 1800. Had they not, the country might have torn itself apart. The cause of the bitterness was the distribution of power between the federal government and the states. It is easy for us to forget, so revered is our Constitution, that it was anything but a sure thing that the country would prosper under that historic document. Many people continued to believe even after ratification that the Constitution did not contain sufficient guarantees that the federal government would not become too powerful, and any tendencies to increase federal power were viewed with much skepticism. The Sedition Act of 1798, an attempt by the Federalists to squelch criticism of President John Adams and his administration, was seen by the Republicans as a dangerous usurpation of power, not to mention a violation of the First Amendment. Under the Sedition Act a number of Federalist writers were prosecuted.

Thomas Jefferson and James Madison, the two leading Republicans, wrote resolutions protesting the Sedition Act (as well as the Alien Enemies Act, which was scarcely used) and had them published by the legislatures of Kentucky and Virginia. (Jefferson's contribution was anonymous since he was Vice President.) It is one of the first shots fired in what will become a long struggle over states' rights, which of course ultimately led to civil war. The first paragraph of the Kentucky Resolutions contains the essence of the issue--mistrust of the federal government.

This version of the two acts may be found in volume 4 of The Annals of America published by Encyclopedia Britannica, Inc., 1968, pages 62-67.

THE KENTUCKY RESOLUTIONS

I. *Resolved*, that the several states composing the United States of America are not united on the principle of unlimited submission to their general government; but that, by compact, under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a general government for special purposes, delegated to that government certain definite powers, reserving, each state to itself, the residuary mass of right to their own self-government. And that whensoever 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 infractions as of the mode and measure of redress.

2. *Resolved*, that the Constitution of the United States having delegated to Congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies and felonies committed on the high seas, and offenses against the laws of nations, and no other crimes whatever; and it being true, as a general principle, and one of the amendments to the Constitution having also declared "that the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people"; therefore, also, the same act of Congress, passed on the 14th day of July, 1798, and entitled "An Act in Addition to the Act Entitled 'An Act for the Punishment of Certain Crimes Against the United States,'" as also the act passed by them on the 27th day of June, 1799, entitled "An Act to Punish Frauds Committed on the Bank of the United States" (and all other their acts which assume to create, define, or punish crimes other than those enumerated in the Constitution), are altogether void and of no force; and that the power to create, define, and punish, such other crimes is reserved, and of right appertains, solely and exclusively, to the respective states, each within its own territory.

3. *Resolved*, that 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 by it to the states, are reserved to the states respectively, or to the people;" and that no power over the freedom of religion, freedom of speech, or freedom of the press, being delegated to the United States by the Constitution, nor prohibited by it to the states, all lawful powers respecting the same did of right remain, and were reserved to the states, or to the people; that thus was manifested their determination to retain to themselves the right of judging how far the licentiousness of speech, and of the press, may be abridged without lessening their useful freedom, and how far those abuses, which cannot be separated from their use, should be tolerated rather than the use be destroyed. And thus also they guarded against all abridgment, by the United States, of the freedom of religious principles and exercises, and retained to themselves the right of protecting the same, as this, stated by a law passed on the general demand of its citizens, had already protected them from all human restraint or interference; and that, in addition to this general principle and express declaration, another and more special provision has been made by one of the amendments to the Constitution, which expressly declares that "Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press," thereby guarding, in the same sentence, and under the same words, the freedom of religion, of speech, and of the press, insomuch that whatever violates either throws down the sanctuary which covers the others; and that libels, falsehood, and defamation, equally with heresy and false religion, are withheld from the cognizance of federal tribunals. That, therefore, the act of the Congress of the United States, passed on the 14th of July, 1798, entitled "An Act in Addition to the Act Entitled 'An Act for the Punishment of Certain Crimes Against the United States,'" which does abridge the freedom of the press, is not law, but is altogether void and of no force.

4. *Resolved*, that alien friends are under the Jurisdiction and protection of the laws of the state wherein they are; that no power over them has been delegated to the United States, nor prohibited to the individual states, distinct from their power over citizens; and it

being true, as a general principle, and one of the amendments to the Constitution having also declared, that "the powers not delegated to the United States by the Constitution, nor prohibited to the states, are reserved to the states, respectively, or to the people," the act of the Congress of the United States, passed the 22nd day of June, 1798, entitled "An Act Concerning Aliens," which assumes power over alien friends not delegated by the Constitution, is not law, but is altogether void and of no force.

5. *Resolved*, that, in addition to the general principle, as well as the express declaration, that powers not delegated are reserved, another and more special provision inserted in the Constitution from abundant caution has declared, "that the migration or importation of such persons as any of the states now existing shall think proper to admit shall not be prohibited by the Congress prior to the year 1808." That this commonwealth does admit the migration of alien friends described as the subject of the said act concerning aliens; that a provision against prohibiting their migration is a provision against all acts equivalent thereto, or it would be nugatory; that to remove them, when migrated, is equivalent to a prohibition of their migration, and is, therefore, contrary to the said provision of the Constitution, and void.

6. *Resolved*, that the imprisonment of a person under the protection of the laws of this commonwealth, on his failure to obey the simple order of the president to depart out of the United States, as is undertaken by the said act, entitled, "An Act Concerning Aliens," is contrary to the Constitution, one amendment in which has provided, that "no person shall be deprived of liberty without due process of law;" and that another having provided, "that, in all criminal prosecutions, the accused shall enjoy the right of a public trial by an impartial jury, to be informed as to the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have assistance of counsel for his defense," the same act undertaking to authorize the president to remove a person out of the United States who is under the protection of the law, on his own suspicion, without jury, without public trial, without confrontation of the witnesses against him, without having witnesses in his favor, with, out defense, without counsel, contrary to these provisions also of the Constitution, is therefore not law, but utterly void and of no force.

That transferring the power of judging any person who is under the protection of the laws from the courts to the President of the United States, as is undertaken by the same act concerning aliens, is against the article of the Constitution which provides, that "the judicial power of the United States shall be vested in the courts, the judges of which shall hold their office during good behavior," and that the said act is void for that reason also. And it is further to be noted that this transfer of judiciary power is to that magistrate of the general government who already possesses all the executive, and a qualified negative in all the legislative powers.

7. *Resolved*, that the construction applied by the general government (as is evident by sundry of their proceedings) to those parts of the Constitution of the United States which delegate to Congress power to lay and collect taxes, duties, imposts, excises; to pay the debts, and provide for the common defense and general welfare of the United States, and

to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the government of the United States, or any department thereof, goes to the destruction of all the limits prescribed to their power by the Constitution; that words meant by that instrument to be subsidiary only to the execution of the limited powers, ought not to be so construed as themselves to give unlimited powers, nor a part so to be taken as to destroy the whole residue of the instrument; that the proceedings of the general government, under color of those articles, will be a fit and necessary subject for revisal and correction at a time of greater tranquillity, while those specified in the preceding resolutions call for immediate redress.

8 *Resolved*, that the preceding resolutions be transmitted to the senators and representatives in Congress from this commonwealth, who are enjoined to present the same to their respective houses and to use their best endeavors to procure, at the next session of Congress, a repeal of the aforesaid unconstitutional and obnoxious acts.

9. *Resolved*, lastly, that the governor of this commonwealth be, and is, authorized and requested to communicate the preceding resolutions to the legislatures of the several states, to assure them that this commonwealth considers union for special national purposes, and particularly for those specified in their late federal compact, to be friendly to the peace, happiness, and prosperity, of all the states: that, faithful to that compact, according to the plain intent and meaning in which it was understood and acceded to by the several parties, it is sincerely anxious for its preservation.

That it does also believe, that, to take from the states all the powers of self-government and transfer them to a general and consolidated government, without regard to the special government, and reservations solemnly agreed to in that compact, is not for the peace, happiness, or prosperity of these states; and that, therefore, this commonwealth is determined, as it doubts not its co-states are, to submit to undelegated and consequently unlimited powers in no man, or body of men, on earth; that, if the acts before specified should stand, these conclusions would flow from them.

That the general government may place any act they think proper on the list of crimes, and punish it themselves, whether enumerated or not enumerated by the Constitution as cognizable by them; that they may transfer its cognizance to the President, or any other person, who may himself be the accuser, counsel, judge, and jury, whose suspicions may be the evidence, his order the sentence, his officer the executioner, and his breast the sole record of the transaction; that a very numerous and valuable description of the inhabitants of these states, being, by this precedent, reduced, as outlaws, to absolute dominion of one man, and the barriers of the Constitution thus swept from us all, no rampart now remains against the passions and the power of a majority of Congress, to protect from a like exportation, or other grievous punishment, the minority of the same body, the legislatures, judges, governors, and counselors of the states, nor their other peaceable inhabitants, who may venture to reclaim the constitutional rights and liberties of the states and people, or who, for other causes, good or bad, may be obnoxious to the view, or marked by the suspicions, of the President, or be thought dangerous to his or their elections, or other interests, public or personal.

That the friendless alien has been selected as the safest subject of a first experiment; but the citizen will soon follow, or rather has already followed; for already has a Sedition Act marked him as a prey. That these and successive acts of the same character, unless arrested on the threshold, may tend to drive these states into revolution and blood, and will furnish new calumnies against republican governments, and new pretexts for those who wish it to be believed that man cannot be governed but by a rod of iron; that it would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights; that confidence is everywhere the parent of despotism; free government is founded in jealousy, and not in confidence; it is jealousy, and not confidence, which prescribes limited constitutions to bind down those whom we are obliged to trust with power; that our Constitution has accordingly fixed the limits to which, and no farther, our confidence may go; and let the honest advocate of confidence read the Alien and Sedition Acts, and say if the Constitution has not been wise in fixing limits to the government it created, and whether we should be wise in destroying those limits. Let him say what the government is, if it be not a tyranny, which the men of our choice have conferred on the President, and the President of our choice has assented to and accepted, over the friendly strangers to whom the mild spirit of our country and its laws had pledged hospitality and protection; that the men of our choice have more respected the bare suspicions of the President than the solid rights of innocence, the claims of Justification, the sacred force of truth, and the forms and substance of law and justice.

In questions of power, then, let no more be said of confidence in man, but bind him down from mischief by the chains of the Constitution. That this commonwealth does therefore call on its co-states for an expression of their sentiments on the acts concerning aliens, and for the punishment of certain crimes herein before specified, plainly declaring whether these acts are or are not authorized by the federal compact. And it doubts not that their sense will be so announced as to prove their attachment to limited government, whether general or particular, and that the rights and liberties of their co-states will be exposed to no dangers by remaining embarked on a common bottom with their own; but they will concur with this commonwealth in considering the said acts as so palpably against the Constitution as to amount to an undisguised declaration, that the compact is not meant to be the measure of the powers of the general government, but that it will proceed in the exercise over these states of all powers whatsoever. That they will view this as seizing the rights of the states, and consolidating them in the hands of the general government with a power assumed to bind the states, not merely in cases made federal but in all cases whatsoever, by laws made, no, with their consent but by others against their consent. That this would be to surrender the form of government we have chosen, and live under one deriving its power from its own will, and not from our authority; and that the co-states, recurring to their natural rights not made federal, will concur in declaring these void and of no force, and will each unite with this commonwealth in requesting their repeal at the next session of Congress.

The Virginia Resolutions

Resolved, that the General Assembly of Virginia does unequivocally express a firm resolution to maintain and defend the Constitution of the United States, and the constitution of this state against every aggression, either foreign or domestic; and that they will support the government of the United States in all measures warranted by the former.

That this Assembly most solemnly declares a warm attachment to the union of the states, to maintain which it pledges its powers; and that, for this end, it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that union, because a faithful observance of them can alone secure its existence and the public happiness.

That this Assembly does explicitly and peremptorily declare that it views the powers of the federal government as resulting from the compact to which the states are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no further valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound to interpose for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties, appertaining to them.

That the General Assembly does also express its deep regret that a spirit has, in sundry instances, been manifested by the federal government to enlarge its powers by forced constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases (which, having been copied from the very limited grant of powers in the former Articles of Confederation, were the less liable to be misconstrued) so as to destroy the meaning and effect of the particular enumeration which necessarily explains and limits the general phrases, and so as to consolidate the states, by degrees, into one sovereignty, the obvious tendency and inevitable result of which would be to transform the present republican system of the United States into an absolute or, at best, a mixed monarchy.

That the General Assembly does particularly protest against the palpable and alarming infractions of the Constitution in the two late cases of the Alien and Sedition Acts, passed at the last session of Congress; the first of which exercises a power nowhere delegated to the federal government, and which, by uniting legislative and judicial powers to those of executive, subverts the general principles of free government, as well as the particular organization and positive provisions of the federal Constitution; and the other of which acts exercises, in like manner, a power not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the amendments thereto, a power which, more than any other, ought to produce universal alarm, because it is leveled against the right of freely examining public characters and measures, and of free

communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right.

That this state having, by its Convention, which ratified the federal Constitution, expressly declared that, among other essential rights, "the liberty of conscience and the press cannot be canceled, abridged, restrained, or modified, by any authority of the United States," and from its extreme anxiety to guard these rights from every possible attack of sophistry and ambition, having, with other states, recommended an amendment for that purpose, which amendment was, in due time, annexed to the Constitution, it would mark a reproachful inconsistency and criminal degeneracy if an indifference were now shown to the most palpable violation of one of the rights thus declared and secured, and to the establishment of a precedent which may be fatal to the other.

That the good people of this commonwealth, having ever felt, and continuing to feel, the most sincere affection for their brethren of the other states; the truest anxiety for establishing and perpetuating the union of all; and the most scrupulous fidelity to that Constitution, which is the pledge of mutual friendship and the instrument of mutual happiness; the General Assembly does solemnly appeal to the like dispositions in the other states, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional; and that the necessary and proper measures will be taken by each for cooperating with this state, in maintaining unimpaired the authorities, rights, and liberties, reserved to the states respectively, or to the people.

That the governor be desired to transmit a copy of the foregoing resolutions to the executive authority of each of the other states, with a request that the same may be communicated to the legislature thereof and that a copy be furnished to each of the senators and representatives representing this state in the Congress of the United States.