

Document 3.15

The Virginia and Kentucky Resolutions

Virginia Resolution of 1798 [Madison]

Source: <http://www.constitution.org/cons/virg1798.htm>

RESOLVED, That the General Assembly of Virginia, doth 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 all 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 doth 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 the compact; as no further valid that 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 doth 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 so as to consolidate the states by degrees, into one sovereignty, the obvious tendency and inevitable consequence 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 doth 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 no where delegated to the federal government... **and the other of which acts [Sedition Act], 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 that 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 of the Press cannot be cancelled, 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 or 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 reproachable inconsistency, and criminal degeneracy, if an indifference were now shewn, 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.**

... the General Assembly doth solemnly appeal to the like dispositions of 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 co-operating with this state, in maintaining the Authorities, Rights, and Liberties, referred to the States respectively, or to the people...

Agreed to by the [Virginia] Senate, December 24, 1798.

Kentucky Resolutions of 1798 [Jefferson]

Source: <http://www.constitution.org/cons/kent1798.htm>

1. *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 a **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 part, its co-States forming, as to itself, the other party: that **the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself;** since that would have made its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among powers 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....

3. *Resolved*, That it is true as a general principle, and is also expressly declared by one of the amendments to the Constitutions, that “the powers not delegated to the United States by the Constitution, our 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 the people... **That, therefore, the act of Congress of the United States, passed on the 14th day of July, 1798, intituled “An Act in addition to the act intituled 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....**

8. ...in cases of an abuse of the delegated powers, the members of the general government, being chosen by the people, a change by the people would be the constitutional remedy; but, **where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy: that every State has a natural right in cases not within the compact, (*casus non fœderis*) to nullify of their own authority all assumptions of power by others within their limits: that without this right, they would be under the dominion, absolute and unlimited, of whosoever might exercise this right of judgment for them...**

These and successive acts of the same character, unless arrested at the threshold, [will] necessarily drive these States into revolution and blood... 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 further, our **confidence** may go; and let the honest advocate of **confidence** read the alien and sedition acts, and say if the Constitution has not been wise in fixing limits to the government it created, and whether we should be wise in destroying those limits. Let him say what the government is, if it be not a tyranny... **In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.**

Questions to Consider:

1. What did Jefferson and Madison mean when they referred to the Constitution as a *compact*?
2. According to these resolutions, whose responsibility is it to interpret the Constitution?
3. What amendments from the Bill of Rights did Jefferson and Madison use as justification for their protest?
4. Which of these resolutions is stronger and more radical in tone? Explain why.