Primary Sources

The Virginia Resolution and Kentucky Resolutions (1798 & 1799)

In 1798, Congress passed the Alien and Sedition Acts, which gave the president the power to deport or imprison undesirable noncitizens, and which made "any false, scandalous, and malicious" criticism of the government a crime. Outraged by this infringement of the constitutional guarantees of free speech and press, Virginia and Kentucky "resolved" that individual states have the power to declare federal laws unconstitutional and to declare such laws "null and void" within their borders.

Virginia Resolution, 1798

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 that implications have appeared of a design to expound certain general phrases (which having been copied from the very limited grant of power, 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 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 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 levelled 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.

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
serupulous fidelity to that constitution, which is the pledge of mutual friendship,
and the instrument of mutual happiness; 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.

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.

Agreed to by the Senate, December 24, 1798.

Kentucky Resolution, 1798

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 whencesoever 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.

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 law of nations, and no other crimes, whatsoever; and it being
ture 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, not prohibited by it to the States, are reserved to the States
respectively, or to the people," therefore the act of Congress, passed on the 14th
of July, 1798, and intituled "An Act in addition to the act intituled An Act for
the punishment of certain crimes against the United States," as also the act
passed by them on the—day of June, 1798, intituled "An Act to punish frauds
committed on the bank of the United States," (and all their other acts which
assume to create, define, or punish crimes, other than those so 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, The 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 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 opinions and exercises, and retained to
themselves the right of protecting the same, as this State, 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 law 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 violated either,
throws down the sanctuary which covers the others, arid that libels, falsehood,
and defamation, equally with heresy and false religion, are withheld from the
cognizance of federal tribunals. 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.

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 by it to the States, are reserved
to the States respectively, or to the people," the act of the Congress of the United
States, passed on the—day of July, 1798, intituled "An Act concerning aliens,"
which assumes powers 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 said act intituled "An Act concerning aliens" is contrary to the Constitution, one amendment to which has provided that "no person shall be deprived of liberty without due progress of law"; and that another having provided that "in all criminal prosecutions the accused shall enjoy the right to public trial by an impartial jury, to be informed of 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 the 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 accusation, without jury, without public trial, without confrontation of the witnesses against him, without heating witnesses in his favor, without defense, without counsel, is contrary to the provision 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 courts, the judges of which shall hold their offices 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 negative on all Legislative powers.

7. **Resolved**, That the construction applied by the General Government (as is evidenced by sundry of their proceedings) to those parts of the Constitution of the United States which delegate to Congress a power "to lay and collect taxes, duties, imports, and 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 in any department or officer thereof," goes to the destruction of all limits prescribed to their powers by the Constitution: that words meant by the instrument to be subsidiary only to the execution of limited powers, ought not to be so construed as themselves to give unlimited powers, nor a part to be so taken as to destroy the whole residue of that instrument: that the proceedings of the General Government under color of these articles, will be a fit and necessary subject of revisal and correction, at a time of greater tranquillity, while those specified in the preceding resolutions call for immediate redress.

8th. **Resolved**, That a committee of conference and correspondence be appointed, who shall have in charge to communicate the preceding resolutions to the Legislatures of the several States: to assure them that this commonwealth continues in the same esteem of their friendship and union which it has manifested from that moment at which a common danger first suggested a common union: that it considers union, for specified national purposes, and particularly to 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 delegations 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 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, \textit{(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: that nevertheless, this commonwealth, from motives of regard and respect for its co States, has wished to communicate with them on the subject: that with them alone it is proper to communicate, they alone being parties to the compact, and solely authorized to judge in the last resort of the powers exercised under it, Congress being not a party, but merely the creature of the compact, and subject as to its assumptions of power to the final judgment of those by whom, and for whose use itself and its powers were all created and modified: 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 the absolute dominion of one man, and the barrier of the Constitution thus swept away from us all, no ramparts now remains against the passions and the powers of a majority in Congress to protect from a like exportation, or other more grievous punishment, the minority of the same body, the legislatures, judges, governors and counsellors 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 views, or marked by the suspicions of the President, or be thought dangerous to his or their election, or other interests, public or personal; that the friendless alien has indeed 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 its prey: that these and successive acts of the same character, unless arrested at the threshold, necessarily drive these States into revolution and blood and will furnish new calumnies against republican government, 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, which the men of our choice have con erred on our President, and the President of our choice has assented to, and accepted over the friendly stranger to whom the mild spirit of our country and its law have pledged hospitality and protection: that the men of our choice have more respected the bare suspicion of the President, than the solid right of innocence, the claims of justification, the sacred force of truth, and the forms and substance of law and justice. In questions of powers, then, let no more be heard 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 unaltered to limited government, weather general or particular. And that the rights and liberties of their co-States will be exposed to no dangers by remaining embarked in a common bottom with their own. That 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 that 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 as the cases made federal, casus foederis but), in all cases whatsoever, by laws made, not 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 powers from its own will, and not from our authority; and that the co-States, recurring to their natural right in cases not made federal, will concur in declaring these acts void, and of no force, and will each take measures of its own for providing that neither these acts, nor any others of the General Government not plainly and intentionally authorized by the Constitution, shall be exercised within their respective territories.

9th. Resolved, That the said committee be authorized to communicate by writing or personal conference, at any times or places whatever, with any person or persons who may be appointed by any one or more co-States to correspond or confer with them; and that they lay their proceedings before the next session of Assembly.

Kentucky Resolution, 1799

RESOLUTIONS IN GENERAL ASSEMBLY

THE representatives of the good people of this commonwealth in general assembly convened, having maturely considered the answers of sundry states in the Union, to their resolutions passed at the last session, respecting certain unconstitutional laws of Congress, commonly called the alien and sedition laws, would be faithless indeed to themselves, and to those they represent, were they silently to acquiesce in principles and doctrines attempted to be maintained in all those answers, that of Virginia only excepted. To again enter the field of argument, and attempt more fully or forcibly to expose the unconstitutionality of those obnoxious laws, would, it is apprehended be as unnecessary as unavailing.

We cannot however but lament, that in the discussion of those interesting subjects, by sundry of the legislatures of our sister states, unfounded suggestions, and uncandid insinuations, derogatory of the true character and principles of the good people of this commonwealth, have been substituted in place of fair reasoning and sound argument. Our opinions of those alarming measures of the general government, together with our reasons for those opinions, were detailed with decency and with temper, and submitted to the discussion and judgment of our fellow citizens throughout the Union. Whether the decency and temper have been observed in the answers of most of those states who have denied or attempted to obviate the great truths contained in those resolutions, we have now only to submit to a candid world. Faithful to the true principles of the federal union, unconscious of any designs to disturb the harmony of that Union, and anxious only to escape the fangs of despotism, the good people of this commonwealth are regardless of censure or calumniation.

Least however the silence of this commonwealth should be construed into an acquiescence in the doctrines and principles advanced and attempted to be maintained by the said answers, or least those of our fellow citizens throughout the Union, who so widely differ from us on those important subjects, should be deluded by the expectation, that we shall be deterred from what we conceive our duty; or shrink from the principles contained in those resolutions: therefore.

RESOLVED, That this commonwealth considers the federal union, upon the terms and for the purposes specified in the late compact, as conducive to the liberty and happiness of the several states: That it does now unequivocally declare its attachment to the Union, and to that compact, agreeable to its obvious and real intention, and will be among the last to seek its dissolution: That if those who
administer the general government be permitted to transgress the limits fixed by
that compact, by a total disregard to the special delegations of power therein
contained, annihilation of the state governments, and the erection upon their
ruins, of a general consolidated government, will be the inevitable consequence:
That the principle and construction contended for by sundry of the state
legislatures, that the general government is the exclusive judge of the extent of
the powers delegated to it, stop nothing short of despotism; since the discretion of
those who administer the government, and not the constitution, would be the
measure of their powers: That the several states who formed that instrument,
being sovereign and independent, have the unquestionable right to judge of its
infraction; and that a nullification, by those sovereignties, of all unauthorized acts
done under colour of that instrument, is the rightful remedy: That this
commonwealth does upon the most deliberate reconsideration declare, that the
said alien and sedition laws, are in their opinion, palpable violations of the said
constitution; and however cheerfully it may be disposed to surrender its opinion to
a majority of its sister states in matters of ordinary or doubtful policy; yet, in
momentous regulations like the present, which so vitally wound the best rights of
the citizen, it would consider a silent acquiescence as highly criminal: That
although this commonwealth as a party to the federal compact; will bow to the
laws of the Union, yet it does at the same time declare, that it will not now, nor
ever hereafter, cease to oppose in a constitutional manner, every attempt from
what quarter soever offered, to violate that compact:

AND FINALLY, in order that no pretexts or arguments may be drawn from a
supposed acquiescence on the part of this commonwealth in the constitutionality
of those laws, and be thereby used as precedents for similar future violations of
federal compact; this commonwealth does now enter against them, its SOLEMN
PROTEST.

Approved December 3rd, 1799.