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VIRGINIA RESOLUTIONS OF 1798.

PRONOUNCING
THE ALIEN AND SEDITION LAWS
TO BE UNCONSTITUTIONAL,
AND DEFINING THE RIGHTS OF THE STATES,
DRAWN BY MR. MADISON.
IN THE VIRGINIA HOUSE OF DELEGATES,
Friday, Dec. 21, 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 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 that compact, as no farther 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 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 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 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 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 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 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 doth 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 co operating 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.

Attest, JOHN STEWART.
1798, Dec. 24th. Agreed to by the Senate.
H BROOKE.

A true copy from the original deposited in the office of the General Assembly.
JOHN STEWART.
Keeper of Rolls.

KENTUCKY RESOLUTIONS OF 1798 AND 1799.

[THE ORIGINAL DRAUGHT PREPARED BY THOMAS JEFFERSON.]

The following Resolutions passed the House of Representatives of Kentucky, Nov. 10th, 1798. On the passage of the first Resolution, one dissentient; 2d, 3d, 4th, 5th, 6th, 7th, 8th, two dissentients; 9th, three dissentients.

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 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.*

II. *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 offences 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, 1798, 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.

III. *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 abridgement by the United States, of the freedom of religious principles and exercises, and retain 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 the 3d amendment 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.

IV. *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 U. 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 22d 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.

V. *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 inferred 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*.

VI. *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 to 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 defence," the same act undertaking to authorise 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, without defence, without counsel is 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.

VII. *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 defence, 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 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 tranquility, while those specified in the preceding resolutions call for immediate redress.

VIII. *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.

IX. *Resolved lastly*, That the governor of this commonwealth be, and is hereby authorised 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 power 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 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 offences, 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 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 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 view or marked by the suspicions of the President, or to 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 every where 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-estates will be exposed to no dangers by 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, not with their consents, 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 rights* in cases 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.

EDMUND BULLOCK, S. H. R.
JOHN CAMPBELL, S. S. P. T.

Passed the House of Representatives, November 10, 1798.
THO'S. TODD, C. H. R.

In SENATE, Nov. 13, 1798—Unanimously concurred in.
Attest, B. THURSTON, C. S.

Approved, November 19th, 1798.
JAMES GARRARD,
Governor of Kentucky.

By the Governor: HARRY TOULMIN,
Secretary of State.

HOUSE OF REPRESENTATIVES,
Thursday, Nov. 14th, 1799.

The House, according to the standing order of the day, resolved itself into a Committee of the Whole House, on the State of the Commonwealth, Mr. Desha in the Chair; and, after some time spent therein, the Speaker resumed the Chair, and Mr. Desha reported, that the Committee had taken under consideration sundry resolutions passed by several State Legislatures, on the subject of the Alien and Sedition Laws, and had come to a resolution thereupon, which he delivered in at the Clerk's table, where it was read and *unanimously* agreed to by the House, as follows:

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 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 the 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 to the true character and principles of this Commonwealth have been substituted in place of fair reasoning and sound argument. Our opinions of these alarming measures of the General Government, together with our reasons for those opinions, were delivered with decency, and with temper, and submitted to the discussion and judgment of our fellow citizens throughout the Union.—Whether the like decency and temper have been observed in the answers of most of those States, who have denied or attempted to obviate the greath 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. Lest, 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 lest 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, agreeably 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, an annihilation of the State Governments, and the creation 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 the infraction; and, THAT A NULLIFICATION BY THOSE SOVEREIGNTIES, OF ALL UNAUTHORIZED ACTS DONE UNDER COLOR OF THAT INSTRUMENT IS THE RIGHTFUL REMEDY: That this Commonwealth does, under 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 acquiesence 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, or ever hereafter, cease to oppose in a constitutional manner, every attempt at what quarter soever offered, to violate that compact. And, finally, in order that no pretext 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 the Federal compact—this Commonwealth does now enter against them its SOLEMN PROTEST.

Extract, &c.
Attest, THO'S. TODD, C. H. R.

In SENATE, Nov. 22, 1799—Read and concurred in.
Attest, B. THURSTON, C. S.

EXTRACT FROM
MR. MADISON'S REPORT ON THE VIRGINIA RESOLUTIONS.

Virginia House of Delegates,
Session of 1799—1800.

Report of the Committee to whom were referred the communications of various States, relative to the Resolutions of the last General Assembly of this State, concerning the Alien and Sedition Laws.

Whatever room might be found in the proceedings of some of the States, who have disapproved of the resolutions of the General Assembly of this Commonwealth, passed on the 21st day of December, 1798, for painful remarks on the spirit and manner of those proceedings, it appears to the committee most consistent with the duty as well as dignity of the General Assembly, to hasten an oblivion of every circumstance, which might be construed into a diminution of mutual respect, confidence and affection, among the members of the Union.

The committee have deemed it a more useful task to revise, with a critical eye, the resolutions which have met with this disapprobation; to examine fully the several objections and arguments which have appeared against them; and to inquire whether there can be any errors of fact, of principle, or of reasoning, which the candor of the General Assembly ought to acknowledge and correct.

The *first* of the resolutions is in the words following:

"*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 U. States in all measures warranted by the former."

No unfavorable comment can have been made on the sentiments here expressed. To maintain and defend the constitution of the United States, and to support the Government of the United States in all measures warranted by their constitution, are duties which the General Assembly ought always to feel, and to which, on such an occasion, it was evidently proper to express their sincere and firm adherence.

In their *next* resolution—"The General 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."

The observation just made is equally applicable to this solemn declaration, of warm attachment to the Union, and this solemn pledge to maintain it; nor can any question arise among enlightened friends of the Union, as to the duty of watching over and opposing every infraction of those principles which constitute its basis, and a faithful observance of which, can alone secure its existence, and the public happiness thereon depending.

The *third* resolution is in the words following:

"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 that compact—as no further valid than they are authorised 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.

On this resolution, the committee have bestowed all the attention which its importance merits: They have *scanned* it not merely with a strict, but with a severe eye; and they feel confidence in pronouncing that, in its just and fair construction, it is unexceptionably true in its several positions, as well as constitutional and conclusive in its inferences.

The resolution declares; *first*, that "it views the powers of the Federal Government, as resulting from the compact to which the states are parties," in other words, that the federal powers are derived from the Constitution; and that the constitution is a compact to which the states are parties.

Clear as the position must seem, that the Federal powers are derived from the Constitution, and from that alone, the committee are not unapprised of a late doctrine, which opens another source of federal powers, not less extensive and important, than it is new and unexpected. The examination of this doctrine will be most conveniently connected with a review of a succeeding resolution. The committee satisfy themselves here with briefly remarking, that in all the contemporary discussions and comments which the Constitution underwent, it was constantly justified and recommended, on the ground that the powers not given to the government, were withheld from it; and, that if any doubt could have existed on this subject, under the original text of the Constitution, it is removed, as far as words could remove it, by the 10th amendment, now a part of the Constitution, which expressly declares, "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 other position involved in this branch of the resolution, namely, "that the states are parties to the Constitution or compact, is, in the judgment of the committee, equally free from objection. It is indeed true, that the term 'states,' is sometimes used in a vague sense, and sometimes in different senses according to the subject to which it is applied. Thus, it sometimes means the separate sections of territory occupied by the political societies within each; sometimes the particular governments, established by those societies; sometimes those societies are organized into those particular governments; and lastly, it means the people composing those political societies, in their highest sovereign capacity. Although it might be wished that the perfection of language admitted less diversity in the signification of the same words, yet little inconvenience is produced by it, where the true sense can be collected with certainty from the different applications. In the present instance, whatever different construction of the term 'states,' in the resolution may have been entertained, all will at least concur in that last mentioned, because in that sense, the constitution was submitted to the "states," in that sense the "states ratified it: and in that sense of the term "states" they are consequently parties to the compact from which the powers of the Federal Government result.

The next position is, that the General Assembly views the powers of the Federal Government, "as limited by the plain sense and intention of the instrument constituting that compact," and "as no farther valid than they are authorized by the grants therein enumerated." It does not seem possible, that any just objection can lie against either of these clauses. The first amounts merely to a declaration, that the compact ought to have the interpretation plainly intended by the parties to it; the other to a declaration, that it ought to have the execution and effect intended by them. If the powers granted be valid, it is solely because they are granted; and if the granted powers are valid, because granted, all other powers not granted, must not be valid.

The resolution having taken this view of the Federal compact, proceeds to infer, "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."

It appears, to your committee to be a plain principle, founded in common sense, illustrated by common practice, and essential to the nature of compacts—that, where resort can be had to no tribunal superior to the authority of the parties, the parties themselves must be the rightful judges in *the last resort*, whether the bargain made has been pursued or violated. The constitution of the United States, was formed by the sanction of the States, given *by each* in its sovereign capacity. It adds to the stability and dignity, as well as to the authority of the constitution, that it rests on this legitimate and solid foundation. The states, then, being the parties to the constitutional compact, and in their sovereign capacity, it follows of necessity, that there can be no tribunal above their authority, to decide in the last resort, whether the compact made by them be violated; and, consequently, that, as the parties to it, they must themselves decide in the last resort, such questions as may be of sufficient magnitude to require their interposition.

It does not follow, however, that because the States, as sovereign parties to their constitutional compact, must ultimately decide whether it has been violated, that such a decision ought to be interposed, either in a hasty manner, or on doubtful, and inferior occasions. Even in the case of ordinary conventions between different nations, where, by the strict rule of interpretation a breach of a part may be deemed a breach of the whole; every part being deemed a condition of every other part, and of the whole, it is always laid down that the breach must be both willful and material to justify an application of the rule. But in the case of an intimate and constitutional union, like that of the United States, it is evident that the interposition of the parties, in their sovereign capacity, can be called for by occasions only, deeply and essentially affecting the vital principles of their political system.

The resolution has, accordingly, guarded against any misapprehension of its object, by expressly requiring for such an interposition, "the case of a *deliberate, palpable* and *dangerous* breach of the constitution, by the exercise of *powers not granted* by it." It must be a case not of a light and transient nature, but of a nature *dangerous* to the great purposes for which the constitution was established. It must be a case, moreover, not obscure or doubtful in its construction, but plain and *palpable*. Lastly, it must be a case not resulting from a partial consideration, or hasty determination; but a case stampt with a final consideration and *deliberate* adherence. It is not necessary, because the resolution does not require, that the question should be discussed, how far the exercise of any particular power, ungranted by the constitution, would justify the interposition of the parties to it. As cases might easily be stated, which none would contend ought to fall within that description—cases on the other hand, might with equal ease, be stated, so flagrant and so fatal, as to unite every opinion in placing them within the description.

But the resolution, has done more than guard against misconstruction, by expressly referring to cases of a *deliberate, palpable* and *dangerous* nature. It specifies *the object of the interposition* which it contemplates, to be *solely* that of arresting the progress of the evil of usurpation and of maintaining the authorities, rights and liberties appertaining to the States, as parties to the Constitution.

From this view of the resolution, it would seem inconceivable that it can incur any just disapprobation from those, who, laying aside all momentary impressions, and recollecting the genuine source and object of the Federal Constitution, shall candidly and accurately interpret the meaning of the General Assembly. If the deliberate exercise of dangerous powers, palpably withheld by the constitution, could not justify the parties to it, *in interposing* even so far as *to arrest the progress of the evil*, and thereby to preserve the Constitution itself, as well as to provide for the safety of the parties to it, there would be an end to all relief from usurped power, and a direct subversion of the rights specified or recognised under all the State Constitutions, as well as a plain denial of the fundamental principle on which our independence itself was declared.

But it is objected, that the judicial authority is to be regarded as the sole expositor of the Constitution in the last resort; and it may be asked for what reason, the declaration by the General Assembly, supposing it to be theoretically true, could be required at the present day, and in so solemn a manner.

On this objection it might be observed, *first*: that there may be instances of usurped power, which the forms of the Constitution would never draw within the control of the Judicial department: *secondly*, that if the decision of the Judiciary be raised above the authority of the sovereign parties to the Constitution, the decisions of the other departments, not carried by the forms of the Constitution before the Judiciary, must be equally authoritative and final with the decisions of that department.—But the proper answer to the objection is, that the resolution of the General Assembly relates to those great and extraordinary cases, in which all the forms of the Constitution may prove ineffectual against infractions dangerous to the essential rights of the parties to it. The resolution supposes that dangerous powers, not delegated, may not only be usurped and executed by the other departments, but that the

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