

~~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.~~

Massachusetts Resolutions in Reply to Virginia (adopted on February 13, 1799)⁷²

The Legislature of Massachusetts, having taken into serious consideration the resolutions of the state of Virginia, passed the 21st day of December last, and communicated by his excellency the governor, relative to certain supposed infractions of the Constitution of the United States by the government thereof; and being convinced that the federal Constitution is calculated to promote the happiness, prosperity, and safety of the people of these United States, and to maintain that union of the several states so essential to the welfare of the whole; and being bound by solemn oath to support and defend that Constitution, feel it unnecessary to make any professions of their attachment to it or of their firm determination to support it against every aggression, foreign or domestic.

But they deem it their duty solemnly to declare that, while they hold sacred the principle that consent of the people is the only pure source of just and legitimate power, they cannot admit the right of the state legislatures to denounce the administration of that government to which the people themselves, by a solemn compact, have exclusively committed their national concerns.

That, although a liberal and enlightened vigilance among the people is always to be cherished, yet an unreasonable jealousy of the men of their choice and a recurrence to measures of extremity upon groundless or trivial pretexts have a strong tendency to destroy all rational liberty at home and to deprive the United States of the most essential advantages in relations abroad.

That this legislature are persuaded that the decision of all cases in law and equity arising under the Constitution of the United States, and the construction of all laws made it [in] pursuance thereof, are exclusively vested by the people in the judicial courts of the United States.

That the people, in that solemn compact which is declared to be the supreme law of the land, have not constituted the state legislatures the judges of the acts or measures of the federal government but have confided to them the power of proposing such amendments of the Constitution as shall appear to them necessary to the interests, or conformable to the wishes, of the people whom they represent.

That, by this construction of the Constitution, an amicable and dispassionate remedy is pointed out for any evil which experience may prove to exist, and the peace and prosperity of the United States may be preserved without interruption.

But, should the respectable state of Virginia persist in the assumption of the right to declare the acts of the national government unconstitutional, and should she oppose successfully her force and will to those of the nation, the Constitution would be reduced to a mere cipher, to the form and pageantry of authority without the energy of power. Every act of the federal government which thwarted the views or checked the ambitious projects of a particular state, or of its leading and influential members, would be the object of opposition and of remonstrance, while the people, convulsed and confused by the conflict between two hostile jurisdictions, enjoying the protection of neither, would be wearied into a submission to some bold leader who would establish himself on the ruins of both.

The legislature of Massachusetts, although they do not themselves claim the right nor admit the authority of any of the state governments to decide upon the constitutionality of the acts of the federal government, still—lest their silence should be construed into disapprobation or at best into a doubt as to the constitutionality of the acts referred to by the state of Virginia, and as the General Assembly of Virginia has called for an expression

of their sentiments—do explicitly declare that they consider the acts of Congress, commonly called the Alien and Sedition Acts, not only constitutional but expedient and necessary.

That the former act respects a description of persons whose rights were not particularly contemplated in the Constitution of the United States, who are entitled only to a temporary protection while they yield a temporary allegiance, a protection which ought to be withdrawn whenever they become "dangerous to the public safety" or are found guilty of "treasonable machination" against the government.

That Congress, having been especially entrusted by the people with the general defense of the nation, had not only the right but were bound to protect it against internal as well as external foes.

That the United States, at the time of passing the Act Concerning Aliens, were threatened with actual invasion; had been driven by the unjust and ambitious conduct of the French government into warlike preparations, expensive and burdensome; and had then, within the bosom of the country, thousands of aliens, who, we doubt not, were ready to cooperate in any external attack.

It cannot be seriously believed that the United States should have waited till the poniard had in fact been plunged. The removal of aliens is the usual preliminary of hostility and is justified by the invariable usages of nations. Actual hostility had unhappily long been experienced, and a formal declaration of it the government had reason daily to expect. The law, therefore, was just and salutary; and no officer could with so much propriety be entrusted with the execution of it as the one in whom the Constitution has reposed the executive power of the United States.

The Sedition Act, so-called, is, in the opinion of this legislature, equally defensible. The General Assembly of Virginia, in their resolve under consideration, observe that when that state by its convention ratified the federal Constitution, it expressly declared, "that, among other essential rights, the liberty of conscience and of the press cannot be canceled, abridged, restrained, or modified by an authority of the United States," and, from its extreme anxiety to guard these rights from every possible attack of sophistry or ambition, with other states, recommended an amendment for that purpose, which amendment was, in due time, annexed to the Constitution; but they did not surely expect that the proceedings of their state convention were to explain the amendment adopted by the Union. The words of that amendment on this subject are, "Congress shall make no law abridging the freedom of speech or of the press."

The act complained of is no abridgment of the freedom of either. The genuine liberty of speech and the press is the liberty to utter and publish the truth; but the constitutional right of the citizen to utter and publish the truth is not to be confounded with the licentiousness, in speaking and writing, that is only employed in propagating falsehood and slander. This freedom of the press has been explicitly secured by most if not all the state constitutions; and of this provision there has been generally but one construction among enlightened men—that it is a security for the rational use and not the abuse of the press—of which the courts of law, the juries, and people will judge; this right is not infringed but confirmed and established by the late act of Congress.

By the Constitution, the legislative, executive, and judicial departments of government are ordained and established, and general enumerated powers vested in them respectively, including those which are prohibited to the several states. Certain powers are granted in general terms, by the people, to their general government for the purposes of their safety and protection. The government is not only empowered but it is made their duty to repel invasions and suppress insurrections; to guarantee to the several states a republican form of government; to protect each state against invasion and, when applied to, against domestic violence; to hear and decide all cases in law and equity arising under the Constitution and under any treaty or law made in pursuance thereof, and all cases of admiralty and maritime jurisdiction, and relating to the law of nations. Whenever, therefore, it becomes necessary to effect any of the objects designated, it is perfectly consonant to all just rules

of construction to infer that the usual means and powers necessary to the attainment of that object are also granted. But the constitution has left no occasion to resort to implication for these powers; it has made an express grant of them, in Section 8 of Article I, which ordains,

that Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

This Constitution has established a Supreme Court of the United States, but has made no provision for its protection, even against such improper conduct in its presence as might disturb its proceedings, unless expressed in the section before recited. But as no statute has been passed on this subject, this protection is, and has been for nine years past, uniformly found in the application of the principles and usages of the common law. The same protection may unquestionably be afforded by a statute passed in virtue of the before-mentioned section, as necessary and proper for carrying into execution the powers vested in that department. A construction of the different parts of the Constitution, perfectly just and fair, will, on analogous principles, extend protection and security against the offenses in question to the other departments of government in discharge of their respective trusts.

The President of the United States is bound by his oath "to preserve, protect, and defend the Constitution"; and it is expressly made his duty "to take care that the laws be faithfully executed." But this would be impracticable by any created being if there could be no legal restraint of those scandalous misrepresentations of his measures and motives which directly tend to rob him of the public confidence; and equally impotent would be every other public officer, if thus left to the mercy of the seditious.

It is held to be a truth most clear that the important trusts before enumerated cannot be discharged by the government to which they are committed without the power to restrain seditious practices and unlawful combinations against itself, and to protect the officers thereof from abusive misrepresentations. Had the Constitution withheld this power, it would have made the government responsible for the effects, without any control over the causes which naturally produce them, and would have essentially failed of answering the great ends for which the people of the United States declare, in the first clause of that instrument, that they establish the same; viz.,

to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.

Seditious practices and unlawful combinations against the federal government or any officer thereof in the performance of his duty, as well as licentiousness of speech and of the press, were punishable on the principles of common law in the courts of the United States before the act in question was passed. This act, then, is an amelioration of that law in favor of the party accused, as it mitigates the punishment which that authorizes and admits of any investigation of public men and measures which is regulated by truth. It is not intended to protect men in office, only as they are agents of the people. Its object is to afford legal security to public offices and trusts created for the safety and happiness of the people, and therefore the security derived from it is for the benefit of the people and is their right.

This construction of the Constitution, and of the existing law of the land, as well as the act complained of, the legislature of Massachusetts most deliberately and firmly believe results from a just and full view of the several parts of the Constitution; and they consider that act to be wise and necessary as an audacious and unprincipled spirit of falsehood and abuse had been too long unremittingly exerted for the purpose of perverting public opinion, and threatened to undermine and destroy the whole fabric of government.

The legislature further declare that in the foregoing sentiments they have expressed the general opinion of their constituents, who have not acquiesced without complaint in those particular measures of the federal government but have given their explicit approbation by reelecting those men who voted for the adoption of them. Nor is it apprehended that the citizens of this state will be accused of supineness or of an indifference to their constitutional rights; for while, on the one hand, they regard with due vigilance the conduct of the government; on the other, their freedom, safety, and happiness require that they should defend that government and its constitutional measures against the open or insidious attacks of any foe, whether foreign or domestic.

And, lastly, that the legislature of Massachusetts feel a strong conviction that the several United States are connected by a common interest, which ought to render their union indissoluble; and that this state will always cooperate with its confederate states in rendering that union productive of mutual security, freedom, and happiness.

~~Kentucky Resolutions of 1799~~
(adopted on November 22, 1799)⁷³

~~Resolved~~, that this commonwealth considers the federal Union, upon the terms and for the purposes specified in the late compact, 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 not 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 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 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.