

2. The Virginia Legislature Protests (1798)

The Federalist Sedition Act was plainly a violation of the free-speech and free-press guarantees of the Constitution (First Amendment, Bill of Rights). But the Federalist

Supreme Court was not yet declaring acts of Congress unconstitutional. When Jeffersonians branded the Sedition Act the "gag law," one Federalist editor replied: "Nothing can so completely gag a Jeffersonian Democrat as to restrain him from lying. If you forbid his lying, you forbid his speaking." A score or so of Jeffersonian editors were arrested, including the unbridled Benjamin Franklin Bache, who died before his trial. Vice-President Jefferson and James Madison (who was then in private life) both feared that the Sedition Act would terrorize the Jeffersonian Republican party into silence and destroy it. Madison, working secretly with Jefferson, drafted the following resolutions, which were approved by the Virginia legislature. Note especially the views on the "compact theory," the First Amendment, and the proposed method of voiding the Alien and Sedition laws. Do they seem unreasonable?

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

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

That the General Assembly does also express its deep regret that a spirit has, in sundry instances, been manifested by the federal government to enlarge its powers by forced constructions of the constitutional charter which defines them. . . . so as to consolidate the states, by degrees, into one sovereignty, the obvious tendency and inevitable result of which would be to transform the present republican system of the United States into an absolute, or, at best, a mixed monarchy.

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

That this state having, by its convention [of 1788] which ratified the federal Constitution, expressly declared that, among other essential rights, "the liberty of conscience and the press cannot be canceled, abridged, restrained, or modified by any authority

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

2. Jefferson Deplores Undue Force (1794)

Hamilton was accused of deliberately aggravating the Whiskey Rebellion so that he might strengthen the prestige of the new government with an overpowering show of might. At all events, he marched out to the disaffected region with an army of some thirteen thousand militiamen. Resistance evaporated before such a force. Jefferson was appalled that these extravagant measures should have been taken against "occasional riots," and charged that Hamilton was merely pursuing his "favorite purpose of strengthening government and increasing public debt," all under "the sanction of a name [Washington] which has done too much good not to be sufficient to cover harm also." From his luxurious home, Monticello, Jefferson wrote indignantly as

follows to James Madison, his friend and neighbor. Six years later these same back-country rebels, who had incurred Hamilton's upper-class scorn, helped elect Jefferson president. Hamilton's show of sledgehammer force no doubt helped the prestige of the national government, but in the light of Jefferson's letter, how did the government probably hurt itself?

The excise law is an infernal one. The first error was to admit it by the Constitution; the second, to act on that admission; the third and last will be to make it the instrument of dismembering the Union, and setting us all afloat to choose which part of it we will adhere to.

The information of our militia, returned from the westward, is uniform, that though the people there let them pass quietly, they were objects of their laughter, not of their fear; that a thousand men could have cut off their whole force in a thousand places of the Allegheny; that their detestation of the excise law is universal, and has now associated to it a detestation of the government; and that separation, which perhaps was a very distant and problematical event, is now near, and certain, and determined in the mind of every man.

I expected to have seen justification of arming one part of the society against another; of declaring a civil war the moment before the meeting of that body [Congress] which has the sole right of declaring war; of being so patient of the kicks and scoffs of our [British] enemies,* and rising at a feather against our friends; of adding a million to the public debts and deriding us with recommendations to pay it if we can, etc., etc.