

THE KENTUCKY RESOLUTIONS: A RE-EXAMINATION

APPROVED:

William P. Vaughn
Major Professor

Howard C. King
Minor Professor

Jack B. Shroyer
Director of the Department of History

Robert B. Toulous
Dean of the Graduate School

THE KENTUCKY RESOLUTIONS: A RE-EXAMINATION

THESIS

Presented to the Graduate Council of the
North Texas State University in Partial
Fulfillment of the Requirements

For the Degree of

MASTER OF SCIENCE

By

C. Gwin Morris, B. M.

Denton, Texas

August, 1966

TABLE OF CONTENTS

	Page
PREFACE	iv
Chapter	
I. ORIGINS	1
II. AUTHORSHIP	20
III. THE KENTUCKY RESOLUTIONS AND THE CONSTITUTION	42
IV. CONTEMPORARY REACTIONS TO THE KENTUCKY RESOLUTIONS	58
V. CONCLUSION	91
APPENDIX	95
A. Jefferson's Rough Draft	
B. Jefferson's Final Draft	
C. The Kentucky Resolutions of 1798	
BIBLIOGRAPHY	114

PREFACE

The dual questions of states' rights and civil liberties have long been crucial issues in American politics. From the inception of the Constitution of the United States to the present time, these two problems have evoked much thought and discussion, and have produced volumes of theories and opinions. They were subjects of debate at the Constitutional Convention in 1787, and during the two year struggle for ratification. Since that time the questions have been debated in the halls of both the state and federal legislatures; from the benches of numerous courtrooms; and on the field of battle. This thesis attempts to focus its attention on one segment of the history of these two issues: the Kentucky Resolutions of 1798 and 1799.

The Kentucky Resolutions of 1798 were written first and foremost as a protest against the Alien and Sedition Acts, passed in the summer of 1798 by a Federalist-dominated Congress. Their permanent significance lies in the fact that they promulgated several constitutional theories while at the same time defending civil liberties and states' rights. The second set of resolutions, passed in 1799, are important for the doctrine of nullification which they advanced. From them, subsequent interpretations, or misinterpretations, have been drawn. Believing that these resolutions require a careful

scrutiny, it will be the object of this thesis to re-examine them in order to reaffirm or re-evaluate traditional interpretations, and to introduce some new insights.

To obtain the most complete picture of the Kentucky Resolutions, and the times which produced them, a careful study was made of contemporary newspapers for the period from March, 1798, to December, 1799. Close attention was also given to the votes and proceedings of the legislatures of the several states in response to the letter and intent of the resolutions. Speeches and sermons were given a perusal in order to obtain a clearer view of non-legislative opinions, and the extent to which these were conveyed to the people. Finally, an attempt has been made to ascertain the probable meaning and significance of the resolutions, and their place in American history.

CHAPTER I

ORIGINS

The year 1798 was one of crisis and conflict in American history, as two opposing political forces sought to determine the nature of the compact which formed the United States, and the course which the nation was to take both in its foreign and domestic affairs. More ideological than physical, although there were depredations at sea, this dispute was waged with words, legislation, and resolutions. On one side of the battle lines stood the Federalist party, controlling the administration of the general government as well as a majority of the state governments. Pro-British in foreign policy, and therefore anti-French, the Federalists desired to maintain a powerful central government controlled by the aristocratic few. Opposing them were the Republicans, drawn to the French by the Alliance of 1778 and the spirit of the French Revolution. They feared the centralization of power taking place in the federal government, believing rather, that the mass of power should be retained in the hands of the people and their elected representatives, the state legislatures. Between these two forces stood the Constitution of the United States, and the pertinent question of its proper interpretation.

The roots of the Kentucky Resolutions are to be found in the context of this dispute, especially in relation to the

nature of the federal compact and the question of constitutional construction, but also within the variety of subsidiary issues which emerged from the central conflict. It seems improbable that one could fully understand the Kentucky Resolutions without first understanding the events and conditions which prompted them. The Resolutions of 1798 were the logical outgrowth of the XYZ Affair, the Massachusetts Resolutions, the Alien and Sedition Acts, and the protest resolutions passed by county meetings in Kentucky and Virginia.

The crisis in foreign affairs came to a climax with the release of the XYZ Dispatches. These documents, embodied in messages delivered by President John Adams on March 5 and 19, and April 3, 1798, were published and laid before the people by order of the Senate.¹ The unfolding story of diplomatic duplicity, in which French agents attempted to extort a bribe from American envoys as the price of negotiations, resulted in a wave of anti-French sentiments throughout the country. These feelings of indignation were not only directed at the French people, but extended to those who sympathized with them

¹U. S., President, Message of the President of the United States, March 5, 1798 (Philadelphia, 1798, Evans #34809); Message Concerning the Dispatches from the Envoys Extraordinary of the United States to the French Republic, March 19, 1798 (Philadelphia, 1798, Evans #34810); Message of the President of the United States to Both Houses of Congress, April 3, 1798 (Philadelphia, 1798, Evans #34812). [The numbers in parentheses refer to the catalogue number in Charles Evans' American Bibliography of early American documents, and the corresponding microcard reprinted by the American Antiquarian Society.]

as well. Federalist newspapers were highly inflammatory in their denouncement of the French and their Republican supporters in the United States, one editor asserting that "in this contest our sole defense and security is in Union, and Americans in this contest will be united; those who do not join us must be considered and treated as Frenchmen and traitors;" ² As the anti-French passion became more pronounced, mass meetings were held; resolutions passed and directed to the President, calling on him to act in America's behalf; and groups of young men, caught up in the war-hysteria, pledged their services and announced their readiness to march at a moment's notice. ³ The Newburyport Herald declared:

Fellow Citizens! rouze [sic] yourselves; our country is threatened, our commerce is already preyed upon by a horde, a numerous horde, of piratical banditti, our seamen imprisoned, and our ambassadors insulted and abused!--Inactivity and ease is now dangerous, nay probably fatal. If you sleep, it is on a dreadful precipice.-- If you stand waiting for better prospects without effort to help yourselves, your very INDEPENDENCE is undermining, and may precipitate you into SLAVERY!!! ⁴

This call was echoed in Federalist newspapers in all areas of the country, as a great majority of the citizenry demanded that steps be taken against the French, and against anyone who sympathized with them. As a result, measures were enacted, both on the state and national level, in order to

²Newburyport Herald and Country Gazette, April 24, 1798, p. 2. [Hereafter cited as the Newburyport Herald]

³Newburyport Herald, May 15, 1798, p. 3.

⁴Ibid.

restrict the activities of aliens and citizens of pro-French, anti-Federalist sympathies.

On the state level the Massachusetts House of Representatives passed a set of resolutions calling for Congress to amend the Constitution to restrict holders of federal offices to native-born citizens. These proposals were adopted by the Massachusetts legislature on June 29, 1798, and sent to the several states for their concurrence and adoption. Reflecting a strong nativistic bias, the resolutions declared:

Whereas it is highly expedient that every constitutional barrier should be opposed to the introduction of foreign influence into our national councils,

. . . . no person shall hereafter be eligible, as President or Vice President of the United States, nor shall any person be a Senator or Representative in the Congress of the United States, except a natural born citizen, . . . [or foreign-born citizens who were residents in America at the time of the Declaration of Independence]⁵

The reactions to these resolutions reveal valuable information about the composition of the legislatures of the several states, and this information makes it easier to understand the contemporary reactions to the Kentucky Resolutions. As might be expected, the New England states were unanimous in their concurrence, adopting the proposals with little or no opposition.⁶ In New York, however, they were rejected in the lower house, sixty-three to forty, reflecting the existence of a strong

⁵Massachusetts, General Court, Resolves of the General Court, June Session (Boston, 1798, Evans #34066). The above is taken from the broadsides that were printed and distributed to the several states.

⁶Philadelphia Magazine, I (January, 1799), 53-55.

Republican force there.⁷ New Jersey passed the resolves in the House of Assembly, twenty-six to ten, and at the same sitting defeated a petition calling for popular election of the President, twenty-eight to eight.⁸ In Maryland, Governor John Henry introduced them with the opinion that it appeared "salutary to carry the Massachusetts resolves into effect," and after consideration and debate, they were adopted in the House of Delegates on January 1, 1799, followed by the Senate on January 9.⁹ The two Republican-controlled states, Virginia and Kentucky, rejected the resolutions as was to be expected, their rejection being in the form of the resolutions passed at their November sessions. North Carolina, with a strong Republican element, rejected the resolves in the House of Commons, December 18, 1798.¹⁰ By far the most stinging negation came from South Carolina, where its House of Representatives declared them to be unnecessary, inexpedient, and asserted that "to deprive any citizen of his eligibility to any office of the United States would violate his civil rights and the Constitution."¹¹

These resolutions posed a serious threat to federal office holders such as Albert Gallatin, the Swiss-born

⁷Ibid., p. 54.

⁸Ibid.

⁹Maryland, House of Delegates, Journal of the Votes and Proceedings of the House of Delegates, November Session, 1798, (Evans #35779).

¹⁰North Carolina, House of Commons, Journal of the House of Commons, November Session (Wilmington, 1798), p. 58, (Evans #34244-34245).

¹¹Philadelphia Gazette and General Advertiser, January 5 1799, p. 3. [Hereafter cited as the Philadelphia Gazette]

Representative from Pennsylvania. It is likely that these measures were directly aimed at removing him from office. They also threatened the political aspirations of a large Irish population in Massachusetts, New York, and Pennsylvania. Since most of those who would be affected by such an amendment as proposed by Massachusetts were of the Republican persuasion, the party was also threatened. It is no surprise that Republican leaders expressed fear of such actions, and began to seek ways in which to combat them. The Massachusetts Resolves were never adopted by Congress, but they revealed a strong nativistic spirit among the Federal party which was enough in itself to cause alarm among Republican citizens and alien residents.

The Congress of the United States had reacted to the XYZ Affair in a spirit similar to that of Massachusetts, but with far greater consequences. During June and July, 1798, it passed a series of legislative acts which have come to be known collectively as the Alien and Sedition Acts. Individually, there were four separate laws: the Naturalization Act; the Act Concerning Aliens; the Act Respecting Alien Enemies; and the Act for the Punishment of Certain Crimes.

The Naturalization Act was reported to the House of Representatives on May 15, 1798.¹² It passed the House on

¹²U. S., Annals of Congress, Fifth Congress, Second Session (Washington, 1851), 1707. [Numbers refer to columns rather than pages]

May 22, and was sent to the Senate for concurrence.¹³ On June 13, the amendments proposed by the Senate were adopted by the House, and the Bill became a federal law on June 18, 1798.¹⁴ The act declared that 'no alien shall be admitted to become a citizen of the United States, or of any state, unless . . . he has resided within the United States fourteen years, . . . and within the state or territory where, or for which such court is at the time held, five years,"¹⁵ This provision repealed the current five year waiting period required for becoming a citizen, but more important, it took the administration of alien affairs out of the hands of the states and made the federal government the final arbiter in such matters. It also threatened French aliens awaiting citizenship by declaring that "no alien, who shall be a native, citizen, denizen, or subject of any nation or state with whom the United States shall be at war, at the time of his application, shall be then admitted to become a citizen of the United States."¹⁶ With war between France and the United States imminent, a goodly number of those currently serving their waiting period stood to lose their eligibility for citizenship.

The Act Concerning Aliens originated in the Senate on May 4.¹⁷ After passing the Senate on June 10 by a vote of

¹³Ibid., 1783.

¹⁴Ibid., 1925.

¹⁵U. S., The Public Statutes at Large, Richard Peters, editor, (Boston, 1861), I, 566. [Hereafter cited as Statutes at Large]

¹⁶Ibid., p. 567.

¹⁷Annals of Congress, Fifth Congress, 554-555.

sixteen to seven, the bill was sent to the House of Representatives.¹⁸ It passed the House on June 21, forty-six to forty¹⁹, and on June 22 the Senate concurred with the House form of the bill.²⁰ The act became a law on June 25. Designed to give the federal government further control over aliens residing in the United States, the act declared:

That it shall be lawful for the President of the United States at any time during the continuance of this act, to order all such aliens as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of the territory of the United States,²¹

Provision was also made to deport aliens imprisoned in pursuance of the act, to require a bond from certain aliens allowed to remain within the territory, and to allow the President to revoke such licenses "whenever he shall think proper."²² All ships arriving in the United States were ordered to declare all aliens aboard, and failure to comply resulted in a fine of three hundred dollars or seizure of property.²³ Aliens ordered to be removed were allowed, however, to dispose of their property or take it with them. The primary objection to this bill was the discretionary power given to the President and the waiver of trial by jury for

¹⁸Ibid., 575.

¹⁹Ibid., 2028.

²⁰Ibid., 586.

²¹Statutes at Large, I, 571.

²²Ibid.

²³Ibid., p. 572.

aliens suspected of treasonable activities.

The Act Concerning Alien Enemies was reported in the House of Representatives on May 18, as a measure to supplement the first Alien Act.²⁴ After passage on June 26²⁵, the bill was sent to the Senate for concurrence. The Senate amended it and returned it to the House on July 3.²⁶ The bill became law on July 6, declaring:

That whenever there shall be a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion shall be perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President of the United States shall make public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nations or government, . . . who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured and removed, as alien enemies.²⁷

Thus, by this act and the previously enacted Alien Act, the President was granted extensive authority over the affairs of aliens residing in the United States, in peace-time or in time of war. Aliens could be imprisoned or deported who were merely suspected of actions contrary to the welfare of the United States.

The last measure included in the Alien and Sedition Acts was the Act for the Punishment of Certain Crimes, called simply

²⁴Annals of Congress, Fifth Congress, 1773.

²⁵Ibid., 2049.

²⁶Ibid., 598.

²⁷Statutes at Large, I, 577.

the Sedition Act. This bill originated in the Senate on June 26, and passed that body on July 4, by a vote of eighteen to six.²⁸ After a heated debate in the House, the bill was accepted on July 10, and returned to the Senate.²⁹ On July 12, the Senate concurred with the amendments proposed by the House, and on July 14, the bill became a federal law.³⁰ The act, as passed, provided that any person or persons who "unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States," or "intimidate or prevent any person holding a place or office in or under the government of the United States, from undertaking or executing his trust or duty;" or "counsel, advise, or attempt to procure any insurrection, riot, unlawful assembly, or combination," would be considered guilty of a high misdemeanor against the statutes of the United States.³¹ It also provided for fines up to five thousand dollars and prison terms up to six years for conviction on any of the above counts. The second section dealt with seditious speech or writing, and declared:

That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing,

²⁸Annals of Congress, Fifth Congress, 590, 599.

²⁹Ibid., 2093-2113, 2171.

³⁰Ibid., 609.

³¹Statutes at Large, I, 596.

uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress . . . , or the said President, or to bring them, . . . into contempt or disrepute; or to excite against them, . . . the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President . . . , or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against the United States, . . . being thereof convicted . . . , shall be punished by a fine not to exceed two-thousand dollars, and by imprisonment not exceeding two years.³²

Although imposing heavy restraints upon the opponents of the general government, the sedition act actually modified the injustice of several points of common law by making truth a defense, the jury judge of fact of libel, and by requiring proof of malicious intent.³³

The Alien and Sedition Acts represent the principal Federalist attempt to suppress the internal enemies of the government, in which category they placed the Republican party. They were the response of a conservative faction attempting to uphold the established order against what it considered to be a threat from the undisciplined masses in the United States.³⁴ The Republicans saw in this legislation not only a threat to their alien friends and their own constitutional liberties, but also to their very existence

³²Ibid., 596-597.

³³John C. Miller, The Federalist Era, The New American Nation Series, (New York, 1960), p. 231. [Hereafter cited as Miller, Federalist Era]

³⁴Ibid., p. 228.

as a political party. By active enforcement of the Alien and Sedition Acts, the Federalists would be able to restrict the political activities of the opposition party, and control the climate opinion so effectively that the Republicans would be virtually shorn of their influence and power.

The Kentucky Resolutions of 1798 were passed first and foremost as a protest against the Alien and Sedition Acts, but they were not the first to formally question the constitutionality of these measures. As early as June 25, 1798, when the citizens of Scott County, Kentucky became alarmed at the government's handling of the XYZ affair and the anti-French measures being proposed in Congress, protests were being lodged by citizens on the local or state level. Adopted during the period when the Alien and Sedition Acts were being introduced in Congress, the Scott County resolutions reflect the fear that the measures of the general government would lead to a war with France. In the state of Kentucky, war with France meant one thing only: the closing of the Mississippi River, the primary avenue of commerce for the state. The residents pointed out that "a French war will be a calamitous event to any part of the union, but more particularly to this Western country, whose commerce, which is alone confined to the Mississippi, would, under such circumstances, be entirely suspended."³⁵ These resolutions set

³⁵Republican Magazine: or Repository of Political Truths, I (October, 1798), 12-14. This journal was published in Fairhaven, Vermont, by James and Matthew Lyon.

the stage for those that would follow.

Later, on July 11, the theory that would be advanced by Jefferson in the Kentucky Resolutions was anticipated by "A Friend to Liberty," who, writing in the Kentucky Gazette, observed:

No country can justly be considered as free, unless its constitution defines the powers which it grants, and reserves to the people, all power which is not necessary to be delegated, to those who are to administer the government; It is therefore, a most essential requirement to a good constitution that it shall declare, that all attempts to exercise powers not delegated, or forbidden to be exercised by the constitution, shall be illegal and void.

 These observations are not intended to prevent us from persevering, and going as far as propriety will justify us in doing, in opposition to the improper and unconstitutional acts of our government; on the contrary, as long as we follow that line of conduct, we shall be encouraged by approving consciences,³⁶

This editorial reveals that there was already in existence the line of reasoning which would ultimately lead to the formulation of the Kentucky Resolutions, and that those who followed this line of reasoning believed that they were within their constitutional rights in doing so.

Following the passage of the Alien and Sedition Acts, the citizens of Kentucky, believing that their constitutional liberties were being circumscribed by an element who wished to establish a monarchy in the United States, met in a series of

³⁶ Kentucky Gazette, July 11, 1798, p. 1.

of county meetings to register their protests. Meeting on July 24, ten days after the passage of the Sedition Act, the residents of Clarke County drafted a set of ten resolutions and directed them to their elected representatives in both the state and federal legislatures. These protest measures declared (1) that officers of the government were accountable to their constituents; (2) that war with France would be impolitic; (3) that alliance with Britain would be as unnatural as it was dangerous; (4) that the alien bill was "unconstitutional, impolitic, unjust, and disgraceful to the American character;" (5) that they would oppose any law abridging their right to speak or write their sentiments on public questions; and (6) that the sedition bill was "the most abominable that was ever attempted to be imposed upon a nation of free men."³⁷ Following closely the form and content of the Clarke County petition, similar resolutions were passed in Woodford County, August 8; Fayette County, August 15; Bourbon County, August 20; Mason County, August 27; and Madison County, September 7.³⁸

In each case, these county resolutions were uniform in affirming loyalty to the Constitution, but pledging opposition to any abridgement of their civil rights; in denouncing war with France or alliance with Britain; in declaring the Alien

³⁷ Ibid., August 1, 1798, p. 3.

³⁸ Ibid., August 8, p. 3; August 29, p. 3; September 5, p. 2; Republican Magazine, I (October 15, 1798), 102-103; Virginia Argus, October 16, 1798, p. 3.

and Sedition acts to be unconstitutional; and in directing their elected representatives to take actions pursuant to having these obnoxious laws repealed. The resolutions from Madison County attacked the Alien and Sedition Acts as an infringement "of the constitution and of natural right,"³⁹ while those from Mason County expressed the fear that the country was being controlled by the commercial class, and asserted that "until that interest becomes subordinate to the agricultural interests, no lasting happiness can be enjoyed by the citizens of America."⁴⁰ This latter declaration called for an early convening of the state legislature to take action in response to these requests.

The measures adopted by the citizens of the above counties in Kentucky seem to indicate that they expected their legislature to take some type of formal action. Had not Jefferson's resolutions made their way into the Kentucky legislature, with the assistance of John Breckinridge, it is likely that in any case, some type of protest measures would have been adopted. The validity of this assumption is supported by a letter written to Breckinridge prior to the opening of the November, 1798, Session of the Kentucky legislature. Breckinridge had written to his friend and colleague, Caleb Wallace, asking him to draft a set of resolutions to be

³⁹Virginia Argus, October 16, 1798, p. 3.

⁴⁰Kentucky Gazette, September 5, 1798, p. 2.

introduced before the Kentucky House of Representatives. Wallace replied that he did not think himself qualified to draft anything of so great importance. He suggested that the main points to which the legislature should direct its attention were the Alien and Sedition laws which he declared were certainly unconstitutional.⁴¹ It is reasonable to assume that Republican leaders in Kentucky planned to respond to the petitions of their constituents by drafting a formal protest against the Alien and Sedition Acts. Had not Jefferson's draft been made available, history might have recorded a completely different set of Kentucky Resolutions.

The spirit of protest was not confined to Kentucky, however. It was evident in Virginia, and to a lesser degree in Tennessee. In Virginia, resolutions similar to those passed in Kentucky were adopted in county meetings throughout the state.⁴² On August 20, the residents of Prince Edward County declared:

We have been heretofore, reluctant to believe that there were characters in our federal councils, capable of designing the overthrow of our rights, and the destruction of our liberties. But the odious Alien and Sedition bills have gone far towards establishing us in this persuasion.⁴³

In Tennessee, the Grand Jury of Hamilton District met at their September session and drafted a protest to the

⁴¹ Caleb Wallace to John Breckinridge, November 5, 1798, as cited in Ethelbert D. Warfield, "The New Light on the Kentucky Resolutions," The Nation, XLIV (June 2, 1887), 467. [Hereafter cited as Warfield, "The New Light. . ."]

⁴² Kentucky Gazette, October 31, 1798, p. 7.

⁴³ Ibid.

Alien and Sedition Acts, setting forth as their opinion, the following:

We, the Grand Jury of the District of Hamilton, State of Tennessee, give as our opinion, that the law passed last session of Congress, called the Alien law, is unconstitutional, oppressive, and derogatory to our general compact, by taking away the trial by jury Also an act passed the same session called the Sedition Act, which has the appearance of cramping the press and privileges of a free Republican people,

Therefore we pray the Legislature of the State of Tennessee to draw up a memorial, to be laid before the members, at the next session of Congress . . . signifying our disapprobation of the above recited acts,⁴⁴

Thus, in Tennessee, as in Kentucky and Virginia, there existed an element, generally within the Republican party, which advocated legislative action on the state level in response to the Alien and Sedition Acts.

News of the activities in Kentucky was spread throughout the several states through newspapers and the medium of private correspondence. The resolutions passed in the county meetings, as well as private letters written to and from citizens of Kentucky, were published by Republican and Federalist newspapers alike. One Virginia correspondent, writing to a friend in Kentucky, remarked that the county resolutions had appeared in almost all of the Virginia newspapers.⁴⁵ From conversation in his state, he was of the opinion that "Kentucky is now contemplated by many, as the

⁴⁴Republican Magazine, I (December 15, 1798), 174.

⁴⁵Kentucky Gazette, October 3, 1798, p. 3.

only asylum from foreign or domestic troubles and from state persecutions."⁴⁶ In another letter, a Federalist gentleman of Pennsylvania related his version of the Kentucky meetings:

You no doubt have heard of the commotion in Kentucky--if not, the story is this: Meetings were called in the principal towns to consider of, or rather abuse the measures of government. Seditious speeches delivered, violent resolutions entered into, and a flame everywhere kindled.⁴⁷

In the same letter, the writer called George Nicholas of Kentucky (one of the leading Republican figures in that state), "a little indolent drunken lawyer, of some talent, but no principle,"⁴⁸ John Skey Eustace of New York, writing under the signature of "An American Soldier," observed that Kentucky was ". . . the least federal, and thence, the most hostile to the union, . . . consequently, the quarter from whence an open attack on their interior tranquility may be first apprehended."⁴⁹

The events between April and September, 1798, form the background and contain the roots from which the Kentucky Resolutions originated. The XYZ Affair led the Federalist-dominated Congress to enact the Alien and Sedition Laws, which the Republicans regarded as an unconstitutional invasion of their individual rights, and concurrently, those

⁴⁶Ibid.

⁴⁷Ibid., November 28, 1798, p. 2.

⁴⁸Ibid.

⁴⁹Philadelphia Gazette, October 25, 1798, p. 2.

of the states. Many Republicans saw in these acts another step in the Federalist plan to place all authority in the central government, and eventually establish a monarchy in America. The federal judges (all of Federalist persuasion), would not allow the constitutionality of the acts to be challenged in the courts, so the Republicans turned to the state legislatures for relief from what they considered to be flagrant violations of the Constitution.⁵⁰

By September, a plan was already being formulated for taking formal action in several states, relative to the Alien and Sedition Acts. Thomas Jefferson, acting at the insistence of several of his colleagues, was in the process of drafting a set of protest resolutions to be introduced in one of the Republican-controlled state legislatures. There can be little doubt that he was cognizant of the protest measures already in existence, and that he was influenced to some degree by both their form and content. This view seeks to place the origin of the Kentucky Resolutions within the context of the events of 1798, and the lines of thought advanced by early protest resolutions and writings.

⁵⁰ Judge Alexander Addison, in his charge to the Grand Juries of Pennsylvania, asserted that "Nations, like individuals, are also bound, by laws of self-preservation, in times of danger, to adopt measures, which would be altogether unjustifiable in ordinary times," and ordered them to uphold the Alien and Sedition Acts, "A Charge to the Grand Juries of the County Courts of the Fifth Circuit of the State of Pennsylvania, December Session, 1798" (Washington, Pennsylvania, 1799, Evans #36001). His opinion on the Alien and Sedition Acts, and the charge to uphold their constitutionality, was answered by "A Lawyer Who Does Not Wish To Be A Judge," in the Kentucky

CHAPTER II

AUTHORSHIP

Much scholarship has gone into the problems related to the authorship of the Kentucky Resolutions; and even though general agreement has been reached on several points, the total question still breeds confusion and error. The problem is compounded in that both the Kentucky and Virginia Resolutions--the former drafted by Thomas Jefferson, the latter by James Madison--were introduced by associates, without the identity of the true authors being revealed. The ethics of secrecy, especially in Jefferson's case, are unquestionable, for he was serving as Vice-President of the United States at the time. Had it been known that the Vice-President was the author of such controversial resolutions, it is likely that the Federalist-controlled Congress would have initiated impeachment proceedings and tried Jefferson under the Sedition Act. As a result, however, the Kentucky Resolutions of 1798 have often been ascribed to John Breckinridge, who introduced them before the Kentucky Legislature.

The fact that there were two sets of Kentucky Resolutions has also led to misunderstandings relative to the authorship of the 1798 documents and those adopted in 1799. While research into the Jefferson papers indicates that he was undoubtedly the author of the 1798 resolutions, there is good reason to

believe that he did not draft the 1799 document.

An additional problem concerns the roles of the various personalities involved, especially those performed by the Nicholas brothers. John C. Miller's The Federalist Era, in the New American Nations Series, affords a striking example of this confusion. He asserts that the Kentucky Resolutions were introduced by George Nicholas on one page.¹ On the succeeding page he states that "John Nicholas toned Jefferson's draft down before presenting it to the Kentucky legislature."² Not only is he in error on both points, but he has completely omitted reference to the Nicholas who was most directly involved with the origin and development of the Kentucky Resolutions. George Nicholas was the eldest of the three brothers, a member of the Kentucky Legislature, and one of the most outspoken critics of the Alien and Sedition Acts; but he was not involved in the introduction of the protest resolutions before the Kentucky House of Representatives in the fall of 1798.³ According to a letter written by Jefferson, George Nicholas was not one of the Republican leaders who suggested that he draft a set of resolutions protesting the federal government's action in passing the Alien and Sedition Act, and support seems to have been

¹ Miller, The Federalist Era, p. 239.

² Ibid., p. 240.

³ Adrienne Koch and Harry Ammon, "The Virginia and Kentucky Resolutions: An Episode in Jefferson's and Madison's Defense of Civil Liberties," William and Mary Quarterly, 3rd Series, V (April, 1948), 150 [Hereafter cited as Koch and Ammon].

the extent of his involvement.⁴ John Nicholas was a resident of Virginia, and one of that state's congressmen, serving in the United States House of Representatives. He, along with Albert Gallatin of Pennsylvania, was one of the leaders of the Republican minority in Congress. Wilson Cary Nicholas was the third member of this well-known trio of brothers. He was a colonel in the Virginia militia, and later served as a member of the United States Senate. He was a close friend of Jefferson, Madison, and John Breckinridge; and it was he who served as the primary communications medium between these three persons. He no doubt was one of the original planners of the protest resolutions drafted by Jefferson, and it was to him that Jefferson entrusted the documents for transmission to North Carolina, the original state in which the resolutions were to be introduced.⁵ Thus, it is easy to see how errors have been made concerning this confusing topic.

Even though the Kentucky Resolutions were penned in secret, there was some suspicion that Jefferson was directly involved. As early as August 5, 1798, one Federalist newspaper commented on the fact that James Thomas Callender, the Republican editor and author of The Prospect Before Us, was visiting in Virginia and queried: "Isn't another Monticello

⁴Thomas Jefferson to Joseph Cabell Breckinridge, December 11, 1821, in Paul Leicester Ford, editor, The Writings of Thomas Jefferson, 10 vols., (New York, 1897), VII, 290-291, [cited hereafter as Ford, Writings of Jefferson]

⁵Sarah Nicholas Randolph, "The Kentucky Resolutions in A New Light," The Nation, XLIV (May, 1887), 383, [cited hereafter as Randolph, "Kentucky Resolutions"]

congress called, to plan opposition or depict an astonishing concentration of abuses?"⁶ The Newburyport Herald intimated that Jefferson was the author of the Virginia Resolutions, asserting that "Mazzei's correspondent, no doubt had a hand in the formation of those rallying points of sedition."⁷ Jefferson himself admitted that he should not draft a second set of resolutions because of suspicions which had been strong in some quarters on the occasion of the last resolutions.⁸ One newspaper early established the fact that the Kentucky Resolutions originated in Virginia, observing that "John Brackenridge [sic] made a journey last August, from Kentucky to the Eastern parts of Virginia, and brot back with him ready penned, the nine resolutions, that are now so talked of, in the Western part of the country."⁹

Jefferson was first named the author of the Kentucky Resolutions of 1798 by John Taylor of Caroline in a footnote to his Inquiry Into the Principles and Policy of the Government of the United States¹⁰, but the reference seemingly passed with little attention. The first major discussion

⁶ Columbian Mirror and Alexandria Gazette, August 9, 1798, p.2.

⁷ Newburyport Herald and Country Gazette, January 25, 1799, p.3.

⁸ Thomas Jefferson to Wilson Cary Nicholas, September 5, 1799, Ford, Writings of Jefferson, VII, 391.

⁹ Commercial Advertiser (New York), December 14, 1798, p. 2.

¹⁰ John Taylor, An Inquiry Into the Principles and Policy of the Government of the United States (Fredricksburg, 1814), reprinted in 1950 by Yale University as part of its Rare Masterpieces of Science and Philosophy series.

of the question arose several years later, when a series of articles in the National Intelligencer and Richmond Examiner named Jefferson as the author of the Kentucky Resolutions.

Up to this point, the documents had been attributed to John Breckinridge. These articles led Joseph Cabell Breckinridge to correspond with Jefferson regarding the elder Breckinridge's role in drafting the Resolutions. Jefferson replied:

I will do it as exactly as the great lapse of time and a waning memory will enable me At the time when the Republicans of our country were so much alarmed at the proceedings of the Federal ascendancy in Congress, in the Executive and the Judiciary departments, it became a matter of serious consideration how head could be made against their enterprises on the Constitution. The leading republicans in Congress found themselves of no use there, browbeaten as they were by a bold and overwhelming majority. They concluded to retire from that field, take a stand in their state legislatures, and endeavor there to arrest their progress. The Alien and Sedition laws furnished the particular occasion I was then in the Vice-Presidency, and could not leave my station; but your father, Colonel W. C. Nicholas, and myself, happening to be together, the engaging the co-operation of Kentucky in an energetic protestation against the constitutionality of those laws became a subject of consultation. Those gentlemen pressed me strongly to sketch resolutions for that purpose, your father undertaking to introduce them to that legislature, with a solemn assurance, which I strictly required, that it should not be known from what quarter they came. I drew and delivered them to him, and in keeping their origin secret he fulfilled his pledge of honor.¹¹

Scholarship has since established several discrepancies in this letter, showing Jefferson's memory to have partially

¹¹Thomas Jefferson to Joseph Cabell Breckinridge, December 11, 1821, Ford, Writings of Jefferson, VII, 290-291.

failed him on this matter. The most important point was that John Breckinridge did not attend the meeting with Jefferson and W. C. Nicholas.¹² E. D. Warfield, however, made this letter the basis for his contention that John Breckinridge was a co-author of the Kentucky Resolutions.

In 1830, during the Hayne-Webster debate in the Senate, the authorship of the Kentucky Resolutions came into national focus. Senator Robert Y. Hayne had alluded to the Resolutions of 1798 and 1799 in his speech, and referred to them as the basis for his present arguments. This prompted the editors of the North American Review to publish a discussion of these resolutions, particularly their relationship to the present debate in the Senate. The Virginia Resolutions were attributed to James Madison and the Kentucky Resolutions of 1798 were admitted to be the work of Thomas Jefferson.¹³ The editors could not, however, be as definite in assigning the authorship of the 1799 resolutions; they could not assign to Jefferson the nullification doctrine being promulgated. Instead, they attributed the 1799 resolutions to Wilson Cary Nicholas, their opinion being:

To give assurance to this sanction [nullification], the Kentucky resolutions of 1799 are ascribed to Mr. Jefferson. Mr. Hayne, in his speech at the Charleston dinner, says that 'they are generally attributed to Mr. Jefferson;' Mr. McDuffie

¹²Randolph, "Kentucky Resolutions," p. 383.

¹³Edward Everett, "The Debate in the Senate of the United States," North American Review, XXXI (October, 1830), 501. [Hereafter cited as Everett, North American Review]

says, 'they were penned by his hand;' and the editor of the Banner of the Constitution [sic], in republishing them in his paper of 10th April last, together with the Virginia resolutions, gives them jointly the title of 'the Resolutions of Virginia and Kentucky, penned by Madison and Jefferson. What it is of importance to state thus repeatedly and confidently, it is of importance to state correctly. We do not say that this Kentucky Resolution of 1799, (for there is but one of that year,) certainly was not written by Mr. Jefferson; but we say there is a strong probability that it was not.¹⁴

The basis for their reasoning was a letter in their possession, from Jefferson to Wilson Cary Nicholas, in which Jefferson declined to pen additional resolutions, but urged Nicholas to use the time he would have on the road from Virginia to Kentucky to meditate on the matter and prepare something himself.¹⁵ The article concluded that it was highly improbable that Jefferson was the author of the resolutions of 1799. In most cases, however, the Kentucky Resolutions were still ascribed to Jefferson, no distinction being made between those of 1798 and those of 1799.

The question of authorship was again brought into focus when Colonel R. T. Durrett of Nashville published a series of articles in the Southern Bivouac for March, April, and May, 1886. Durrett followed the thesis that Breckinridge was one of the principal originators and co-authors of the Kentucky resolutions, basing his reasoning upon letters supposedly from John Breckinridge to George Nicholas.¹⁶ Sarah Nicholas

¹⁴ Ibid., p. 503.

¹⁵ Ibid., p. 504; Ford, Writings of Jefferson, VII, 391.

¹⁶ Randolph, "Kentucky Resolutions," p. 382; Ford, Writings of Jefferson, VII, 291.

Randolph, a great-granddaughter of Thomas Jefferson, was prompted by these articles to make a more thorough study of her great-grandfather's papers and letters. She responded the following year with an article in The Nation, in which she established that John Breckinridge did not attend any meeting at Monticello in the fall of 1798. She was able to show that the resolutions were already drafted before Wilson Cary Nicholas entrusted them to Breckinridge. Thus she was able to show that Jefferson's memory was at fault in the 1821 letter to Joseph C. Breckinridge. Uncovered also, were letters which proved that no meeting took place between Jefferson, Breckinridge, or Wilson Cary Nicholas in the fall of 1799, adding support to the thesis that Jefferson was not the author of the 1799 document.¹⁷

The Randolph article was in turn answered by Ethelbert D. Warfield, president of Lafayette College, who was at the time completing his Kentucky Resolutions of 1798: An Historical Study (New York, 1887). Since he was in possession of the John Breckinridge papers, and was basing the main thesis of his book on the December 11, 1821, letter from Jefferson to Joseph Breckinridge, he took issue with the Randolph article on the question of Jefferson's faulty memory. He asserted that it was a matter of history "that Mr. Jefferson's

¹⁷ Randolph, "Kentucky Resolutions," pp.382-384.

memory was to the very last singularly well preserved as to the events in which he had been an actor."¹⁸ It was his opinion that Breckinridge was at least a co-author of the resolutions, and that he was instrumental in revising the document before it passed the Kentucky House of Representatives.¹⁹

The question of John Breckinridge's role in originating the Kentucky Resolutions was resolved in 1915 by Edward Channing. In an article for the American Historical Review, he introduced the long-sought October 4, 1798, letter from Wilson Cary Nicholas to Thomas Jefferson. This letter served to establish that Nicholas presented Breckinridge with the Jefferson draft after it was in its completed form. The letter also established that Nicholas informed Breckinridge of the author's identity after he had entrusted them to him, and that Breckinridge did not see Jefferson during this trip for fear that it might arouse suspicions.²⁰ Channing was of the opinion that "Breckinridge did not go to Monticello on this visit to his old home near Charlottesville; that he had no part whatever in the inception of the protest against the Alien and Sedition Laws and that their passage by a Kentucky assembly was rather a matter of accident than of design."²¹

The fruits of this scholarship were brought together in 1948 by Adrienne Koch and Harry Ammon in an article from the

¹⁸Warfield, "The New Light," p. 487.

¹⁹Ibid.

²⁰Edward Channing, "Kentucky Resolutions of 1798," American Historical Review, XX (January, 1915), 333-336.

²¹Ibid., p. 336.

William and Mary Quarterly. In addition to re-examining the scholarship up to that point, they introduced the new line of reasoning that Madison was influential in the text of the Kentucky Resolutions of 1798. Their research, based on both Madison's and Jefferson's papers, brought them to that conclusion that:

The closest collaboration between Jefferson and Madison is revealed in the course of these proceedings, showing them to be the only major authors of the Resolutions. Although yeoman service was performed in supporting and sponsoring the Resolutions by John Breckinridge of Kentucky, John Taylor and Wilson Cary Nicholas of Virginia, their contributions to the content of the documents were distinctly minor.²²

In bringing together the various facts and opinions relative to the authorship of the Kentucky Resolutions, Koch and Ammon produced what is considered to be the definitive work on that subject. They did, however, neglect the possibility that Jefferson might not have been the author of the 1799 document.

Thus, scholarship on the authorship of the Kentucky Resolutions has provided historians and students of history with an almost complete picture of the problem and its solutions. Yet, errors and misinterpretations still occur. The best possible explanation for this is the failure of scholars to consult the original sources, all of which are available. All secondary sources should be consulted, and their opinions weighed against the primary materials. There

²²Koch and Ammon, p. 175.

are still questions which must be answered, and the roles of the various principals definitely established.

The development of the Kentucky Resolutions will now be considered in an attempt to clarify some of the misunderstanding with regard to the problem of authorship. Close attention has been given to the contemporary letters of the principal personalities involved, as well as contemporary and recent scholarship in this area.

It is well established that Thomas Jefferson was the author of the original Resolutions which, after certain revisions, came to be adopted by the Kentucky Legislature on November 16, 1798. Two copies are extant in Jefferson's papers. One is a rough draft, with sections crossed-out or rewritten. The second is the corrected version of the first. These are believed to be the originals of the draft taken to Kentucky by John Breckinridge, revised by the committee which he chaired, and adopted by the Kentucky Legislature.²³ It is also established that the Resolutions were written as a protest against the Alien and Sedition Acts. The Republicans decided to make their defense in the state legislatures, which enjoyed considerably more prestige than today. Since Jefferson was the acknowledged leader of the Republican Party, it was logical that he should draft the protest document. It is likely that several meetings were held between the Republican

²³See Appendix A and B.

leaders, and that from these meetings came the decision for Jefferson to draw up the document.

These resolutions were put into completed form prior to October 4, 1798, for on that date Wilson Cary Nicholas informed Jefferson that he had entrusted them to John Breckinridge.²⁴ He noted that Breckinridge was confident that the resolutions would be adopted by the Kentucky legislature, of which he was a member. The letter also informed Jefferson that Breckinridge had been anxious to pay his respects to him, but that both agreed that to do so would cast suspicion that Jefferson was the author. Nicholas then said: "I ventured to inform him that they came from you."²⁵ This one sentence provides the answer to the problem of whether Breckinridge was a co-author or not. It shows that Jefferson was in error in his letter to Joseph C. Breckinridge in 1821, and that Breckinridge was not apprised of their authorship until after Wilson C. Nicholas entrusted them to him.

To this letter Jefferson replied:

I entirely approve of the confidence you have reposed in Mr. Breckinridge, as he possesses mine entirely. I had imagined it better those resolutions should have originated with North Carolina. But perhaps the late changes in their representation may indicate some doubt whether they could have passed. In that case it is better they should come from Kentucky. I understand you intend soon

²⁴Channing, "Kentucky Resolutions of 1798," p. 336; Ford, Writings of Jefferson, VII, 280.

²⁵Ibid.

to go as far as Mr. Madison's. You know of course I have no secrets for him. I wish him therefore to be consulted as to these resolutions.²⁶

Four important facts are revealed in these two letters. First, John Breckinridge was not aware that Jefferson was the author of the resolutions until Wilson Cary Nicholas so informed him. Second, it is seen that Jefferson placed the resolutions in Nicholas's hands, but left him free to make the decision relative to which state they were to go. Nicholas did inform Jefferson of his decision to have them introduced in Kentucky, but he did so after the action was completed. It is also seen that Jefferson recognized that a change in political representation in North Carolina made the change from that state to Kentucky a wise choice. A study of votes and proceedings in North Carolina at its November session in 1798 reveals that while the Republicans still controlled the House of Commons, the Federalists had gained a majority in the Senate.²⁷ On the other hand, Kentucky remained almost unanimously Republican. And finally, Jefferson's letter seems to indicate that Madison was

²⁶Thomas Jefferson to Wilson Cary Nicholas, October 5, 1798, Ford, Writings of Jefferson, VII, 281-282.

²⁷The House of Commons prevented adoption of the Massachusetts Resolutions, but the Senate defeated a Republican petition declaring the Alien and Sedition Acts to be unconstitutional. North Carolina, House of Commons, Journal of the House of Commons, November Session (Wilmington, 1798), p. 58, (Evans #34244); State Gazette of North Carolina, January 2, 1799, p. 3; Green Mountain Patriot, February 28, 1799, p. 3.

unaware of the present resolutions. It may be that Jefferson is referring to the final draft, or to the decision to have them introduced in Kentucky, but the indication is that Madison was not so cognizant of the proceedings as Koch and Ammon would like to believe. Gaillard Hunt, editor of Madison's writings, is of the opinion that Jefferson and Madison "consulted and agreed to concerted action on the part of Kentucky and Virginia against the alien and sedition laws, but that Madison never saw the Kentucky resolutions until they were finished."²⁸ His viewpoint is further strengthened by a letter from Jefferson to Madison on November 17, in which Jefferson enclosed a copy of the Kentucky Resolutions with the suggestion that he and Madison "should distinctly affirm all the important principles they contain,"²⁹ Concerning this letter, Madison wrote to Nicholas Trist in 1830:

In a letter, lately noticed, from Mr. Jefferson, dated November 17, 1799 [sic, he means 1798] he 'incloses me a copy of the draught of the Kentucky Resolves,' Not a word of explanation is mentioned. It was probably sent, and possibly at my request, It is remarkable that the paper differs both from the Kentucky Resolutions of -98, and from those of -99. It agrees with the former in the main and must have been the pattern of the

²⁸ Gaillard Hunt, editor, The Writings of James Madison (New York, 1906), VI, 327. [Hereafter cited as Hunt, Writings of Madison]

²⁹ A. E. Bergh and A. A. Lipscombe, editors, The Writings of Thomas Jefferson (Washington, 1904), X, 62. [Hereafter cited as Memorial Edition]

Resolutions of that year, but contains passages omitted in them, which employ the terms nullification and nullifying;³⁰

It would seem that if he had been directly involved with the drafting of the Kentucky Resolutions of 1798, he would not have been so unsure of the November 17 letter, even thirty-two years later. The draft that Jefferson sent him was a copy of the one given Breckinridge by Wilson Cary Nicholas, and not the actual Kentucky Resolutions of 1798. More than likely, Jefferson sent Madison a copy so that it could be used as a guide for the Virginia Resolutions, which had not, as yet, been introduced before the Virginia House of Delegates. It is not possible to state definitely whether Jefferson and Madison did, or did not closely collaborate in the drafting of the resolutions given to Breckinridge. The available evidence would seem to indicate that they did not. It is more likely that both pursued completely independent courses after the decision was made to draft resolutions to be presented in the state legislatures. If there was actual collaboration, it occurred more with respect to the Virginia Resolutions than those passed in Kentucky.

After receiving Jefferson's letter of October 5, Wilson Cary Nicholas wrote to John Breckinridge:

³⁰ James Madison to Nicholas Trist, September 23, 1830, Hunt, Writings of Madison, IX, 395.

I have been very sick since you left me. . . .
 I have had a letter from our friend. He approves
 what I have done. He says you possess his con-
 fidence entirely--that he thinks the business had
 better commence in your State. He regrets that
 he missed the visit that you and your brother
 intended him, though he is sensible of the
 delicacy and motives of the omission. He sug-
 gests nothing further upon the subject; indeed,
 I think that everything is said that can be in
 the paper that you have. . . .³¹

The text of this correspondence further supports the evidence that John Breckinridge did not see Jefferson during this trip to Virginia. It also intimates that both Nicholas and Breckinridge were left free to act independently of and by Jefferson. Any necessary revisions were left up to Breckinridge after he arrived in Kentucky before presenting the resolutions to the state legislature there. Herein lies his true role in the development of the Kentucky Resolutions.

The Kentucky Legislature assembled on November 7, and the temper of the session was set by Governor James Garrard in his opening message. He called attention to the conduct of the federal government, asserting that

Constituting as this state does, a branch of the federal union; it necessarily becomes a sharer in the general prosperity or adversity; and being deeply interested in the conduct of the national government must have a right to applaud or to censure that government when applause or censure becomes its due.

³¹Wilson Cary Nicholas to John Breckinridge, October 10, 1798, cited in Randolph, "Kentucky Resolutions," p. 384.

It cannot therefore, be improper to draw your attention to sundry acts of the federal legislature, which having violated the constitution of the United States-- . . . have created an uncommon agitation of mind in different parts of the union, and particularly among the citizens of this commonwealth.³²

In response to his message a committee was appointed, with John Breckinridge as chairman, to draft a reply. As part of the reply, Breckinridge announced that he planned to introduce resolutions relative to the Alien and Sedition Acts. The document which he introduced on November 10 was a revised version of the Jefferson draft given him in Virginia, the primary omission being the nullification section of the Eighth Resolve. Breckinridge was undoubtedly the major author of these revisions, making Jefferson's draft more conformable to the climate of opinion in the Kentucky Legislature.

Concerning the possible authorship of the resolutions passed in 1799, it would seem that, although they contain several points suggested by Jefferson, he was not the actual author. There are no copies of the 1799 draft in his papers, and his letters seem to intimate that he refused to prepare the second set of resolutions. He was, however, the prime mover in suggesting that a second set be prepared, and that Kentucky and Virginia pursue the same course as the year before.

³²Kentucky Gazette, November 14, 1798, p. 1.

The first possible reference to the resolutions of 1799 appeared in a letter from Jefferson to Wilson Cary Nicholas on November 29, 1798. In a prior correspondence or visit, Nicholas had submitted some suggestions relative to the resolutions which he had drafted. Jefferson studied the paper and replied:

The more I have reflected on the phrase in the paper you showed me, the more strongly I think it should be altered. Suppose you were, instead of the invitation to cooperate in the annulment of the acts, to make it an invitation to concur with this commonwealth in declaring, as it does hereby declare, that the said acts are, and were ad initio, null and of no force or effect.³³

This letter poses several possibilities as to its purpose and proper context. Sarah Nicholas Randolph believed that it was the basis of the Kentucky Resolutions of 1799.³⁴ If so, Jefferson was probably referring to the revisions made by Breckinridge's committee in the Kentucky House of Representatives. This could indicate that Jefferson was displeased with these revisions, and if a second set were to be written, wanted his original thoughts reinstated. A second possibility is that the letter refers to the Virginia Resolutions, which had not as yet been introduced before the House of Delegates.³⁵ The mildness of the Virginia document indicates that there was

³³Thomas Jefferson to Wilson Cary Nicholas, November 29, 1798, Ford, Writings of Jefferson, VII, 312-313.

³⁴Randolph, "Kentucky Resolutions," p. 384.

³⁵Koch & Ammon, p. 160.

a basic difference of opinion between Jefferson and Madison over the extent to which a state should go in censuring an act of the general government. The reference to "this commonwealth," probably refers to Virginia, as both Jefferson and Nicholas were residents of that state. Nicholas again acted as an intermediary between Jefferson and Madison, this time transmitting Madison's draft of the Virginia Resolutions to Jefferson for his criticism. If this is the correct assumption, then Jefferson was more closely associated with the Virginia Resolutions than Madison was with those sent to Kentucky.

Serious plans for a second set of resolutions began to be made in the fall of 1799. In August, Jefferson wrote to Madison and enclosed a letter from Wilson Cary Nicholas. He suggested the necessity of Virginia and Kentucky pursuing the same course so as to prevent the "Consolidators" from gaining any advantage resulting from disconcerted action.³⁶ In speaking of a concerted action he said: "That the principles already advanced in Virginia and Kentucky are not to be yielded in silence I presume we agree. I would propose a declaration or resolution by their legislatures on the plan."³⁷

Three days later, he wrote to Wilson Cary Nicholas that he was "deeply impressed with the importance of Virginia and

³⁶Thomas Jefferson to James Madison, August 23, 1799, Ford, Writings of Jefferson, VII, 388.

³⁷Ibid.

Kentucky pursuing the same track at the ensuing sessions of their Legislatures."³⁸ He proposed a meeting between Nicholas, Madison, Monroe, and himself, so that Nicholas might transmit their opinions to the Republican leaders in Kentucky. Nicholas was enroute to Kentucky, and his going furnished a valuable opportunity to effect the concerted action which Jefferson desired.

The death of George Nicholas, and Wilson Cary Nicholas's premature departure for Kentucky intervened to prevent this meeting from taking place. Wilson Cary Nicholas wrote Jefferson that

. . . a most unfortunate and melancholy event makes it necessary that I should go in a few days to Kentucky. I believe you think it proper that the legislatures of these two states, should defend the ground they have taken. If that is still your opinion, and you will put upon paper what you think the Kentucky assembly ought to say, I will place it in safe hands."³⁹

Jefferson did not get to see Nicholas, but he was able to supply the requested letter. Leaving the actual choice of form and content to Nicholas, or the Republican leaders in Kentucky, Jefferson wrote that something needed to be said

. . . in order to avoid the inference of acquiescence; that a resolution or declaration should be passed, answering the reasonings of such states as have ventured into the field of reason and that of the

³⁸Thomas Jefferson to Wilson Cary Nicholas, August 26, 1799, Ford, Writings of Jefferson, VII, 389.

³⁹Wilson Cary Nicholas to Thomas Jefferson, August 20, 1799, Nicholas P. Trist papers, Library of Congress, cited in Nathan Schachner, Thomas Jefferson: A Biography (New York, 1951), p. 625.

Committee of Congress, taking some notice of those states who have either not answered at all, or answered without reasoning. 2, making firm protestation against the precedent and principle, and reserving the right to make this palpable violation of the federal compact the ground of doing in future whatever we might now rightfully do, should repetitions of these and other violations of the compact render it expedient.⁴⁰

Madison, however disagreed with the reservation proposed by Jefferson, and Jefferson admitted that he acceded to this view. The resolutions passed the following November, however, made that reservation the central thought, and laid the foundation for the controversy over the Kentucky Resolutions and the doctrine of nullification.⁴¹ Concluding his letter to Wilson Cary Nicholas, Jefferson declined to prepare anything himself, suggesting instead, that Nicholas use the time he would have on the road from Virginia to Kentucky to draw something up himself.

It would seem, then, that although Jefferson suggested that a second set of resolutions be drafted, and made general contributions to the ideas to be expressed, he did not draft the Kentucky Resolutions of 1799. It is more probable that Wilson Cary Nicholas or John Breckinridge were the actual authors. This is further supported by a letter from Jefferson to Breckinridge, in which Jefferson mentions that he had received a copy of the resolutions passed by

⁴⁰Thomas Jefferson to Wilson Cary Nicholas, September 5, 1799, Ford, Writings of Jefferson, VII, 389-391.

⁴¹Kentucky Gazette, November 28, 1799, p. 3.

the Kentucky Legislature in 1799. He said that he was "glad to see the subject taken up, and done with so much temper, firmness, and propriety."⁴² The inference is that Jefferson was not wholly aware that any action would be taken, or what the content of that action would be. After Wilson Cary Nicholas left for Kentucky, the whole matter was completely in his hands. The responsibility for the resolutions of 1799 rested with him, and any assistance he may have received from Republican leaders in that state.

⁴²Thomas Jefferson to John Breckinridge, January 29, 1800, Ford, Writings of Jefferson, VII, 416.

CHAPTER III

THE KENTUCKY RESOLUTIONS AND THE CONSTITUTION

It is generally agreed that the Kentucky Resolutions were drafted primarily as a protest against the Alien and Sedition Acts. One historian called them "an important step in Jefferson's well-laid plans for wresting the control of the Federal Government from the hands of the triumphant Federalists," and credited them with "establishing the starting point for the aggressive doctrine of State sovereignty and nullification."¹ Another authoritative source believed that they "gave expression to a theory concerning the nature of the federal union which was of equal or perhaps greater significance than their protest against all interference with freedom of speech."² Their permanent significance is found in the constitutional theories they advanced.

The Kentucky Resolutions of 1798 opened with a statement relative to the nature of the federal compact. The compact theory stated by Jefferson had its roots in the philosophical ideas promulgated during the American Revolution, and reflected the twin theories of state sovereignty and delegated powers.

¹Robert McNutt McElroy, Kentucky in the Nation's History (New York, 1909), p. 247.

²Anderson, "Contemporary Opinion," p. 45.

These two theories became the basis of the Republican's positions on states' rights. Believing, then, that the actual locus of sovereignty lay with the states who had voluntarily entered into the federal compact, Jefferson declared:

. . . the several states composing the United States of America, are not united on the principle of unlimited submission to their General Government; by that by compact under the style and title of a Constitution . . . 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;³

The first resolve then declared that when the general government assumed powers not delegated to it, its acts under these assumed powers are not only unconstitutional, but unauthoritative, void, and of no force. According to Jefferson and Republican theory, each state had joined the union as a state, and had not relinquished its identity as a state. Since the states created the union, they, and not the government created by the compact, were the final judges of the extent of power delegated to its instrument, the federal government. The Republicans feared the centralization taking place in the national government. The first resolve was Jefferson's affirmation that the states were still the seat of sovereignty, for without this concept of the nature of the union, the states faced the loss of their identity and influence.

³Kentucky, House of Representatives, "Resolutions passed November 10, 1798," (Evans #33952). [Hereafter cited as Appendix C]

The Second Resolve was the first of five directed at establishing the unconstitutionality of the Alien and Sedition Acts. The object of this resolution was the Sedition Act, which Jefferson declared to be unconstitutional, null, and of no force because

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,⁴ and no other crimes whatever, and . . . one of the amendments to the Constitution having 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,'⁵ . . . the power to create, define, and punish such other crimes is reserved, and the right appertains solely and exclusively to the respective states,⁶

In his reasoning, Jefferson was applying very strict construction to the provisions of the Constitution, a position he had occupied since the question of Congress's power to charter a national bank had arisen in 1791. He believed that the Constitution could be preserved only by a literal interpretation of its provisions. The argument of "implied powers" served only to violate the very nature of the document.

The Third Resolve further argued that the Sedition Act was unconstitutional because it violated the protections given to freedom of the press, speech, and religion by the

⁴Reference to Article I, Section 8 of the Constitution.

⁵Reference to the Tenth Amendment to the Constitution.

⁶Appendix C, "Second Resolve."

First and Tenth Amendments. The states had not delegated to Congress the authority to pass legislation respecting freedom of the press, speech, or religion; in fact, the First Amendment specifically prohibited Congress from abridging these freedoms. The states had retained to themselves the right of judging "how far the licentiousness of speech and the press may be abridged without lessening their useful freedom,"7

The Fourth Resolve was directed at the Act Concerning Aliens, and declared that "alien friends are under the jurisdiction and protection of the laws of the State wherein they are; that no power over them had been delegated to the United States,"8 Since Congress had assumed a power over aliens not delegated to them, Jefferson reasoned that the law must be unconstitutional, and therefore null and void.

The Fifth Resolve protested against the Act Concerning Aliens by means of a literal interpretation of Article I, Section 9 of the Constitution. This provision prohibited Congress from passing any law restricting the migration or importation of "such persons as any of the states now existing shall think proper to admit," prior to 1808.⁹ This provision was originally included in the Constitution as a concession

⁷Ibid., "Third Resolve."

⁸Ibid., "Fourth Resolve."

⁹Ibid., "Fifth Resolve."

to southern slave-holders, and referred to the importation of slaves. By broad construction, this provision could be extended to aliens as well, although here Jefferson was guilty of reading a meaning into the Constitution which was never intended by its framers. A writer, calling himself "Simplex," observed that:

It is a little curious that the assembly of Kentucky should complain of the Alien law as abridging their rights, when the express words of the constitution upon this subject are, that the migration or importation of such persons as any of the States now existing shall think proper to admit, It does not seem then that Congress was bound by the constitution not to prohibit the importation of slaves into Kentucky prior to the year 1808, because this stipulation was made only in favor of the existing states.¹⁰

It is easy to see that there was a wide divergence of opinion as to just what the Constitution meant, or as to what the Kentucky Resolutions intended with relation to this subject. Jefferson wanted to interpret the provision so that he could prove that the authority over aliens remained with the states, and that the Constitution prohibited Congress from interfering in this matter until 1808. It is possible that he also had the importation of slavery in mind, as many Republican slaveholders in the South were probably aroused at the implications of the Alien Act; but his main motive seems to have

¹⁰"Simplex #III, To the People of Virginia," Virginia Gazette, April 5, 1799, p. 1.

been the protection of aliens, most of whom were of the Republican persuasion.

The Fifth Amendment was used in the Sixth Resolve to show that the imprisonment of a person under the protection of the state where he resided "on his failure to obey the simple order of the President to depart out of the United States" was unconstitutional.¹¹ It was argued that the Constitution promised the accused a public trial by an impartial jury of the state and district "wherein the crimes shall have been committed, . . . to be informed of the nature and cause of the accusation; . . . and to have the Assistance of Counsel for his defence."¹² Since the Alien Act empowered the President to deport aliens on suspicion of activities contrary to the welfare of the United States without a public trial, it was declared to be "therefore not law but utterly void and of no force."¹³

The Seventh Resolve was a refutation of the "necessary and proper" clause of the Constitution, and its use in the argument for implied powers.¹⁴ Jefferson reasoned that:

the construction applied by the General Government (as is evinced by sundry of their proceedings) to those parts of the Constitution of the United States which delegate to Congress a power . . . to make all laws which shall be necessary and proper for

¹¹Appendix C, "Sixth Resolve;" the Fifth Amendment guaranteed that no person would be deprived of his life, liberty, or property, without due process of law.

¹²Refers to the Sixth Amendment to the Constitution.

¹³Appendix C, "Sixth Resolve."

¹⁴Article I, Section 8 of the Constitution.

carrying into execution the powers vested by the
 Constitution in the Government of the United
 States . . . goes to the destruction of all limits
 prescribed to their power by the Constitution--
¹⁵

The argument was that if the "necessary and proper" clause were to be so loosely constructed, the Constitution could be interpreted in any manner that the party in power wished it to be. In such a case, the doctrine of reserved and delegated powers would be useless.

Up to this point, all three documents-Jefferson's rough draft, his final draft, and the Kentucky Resolutions of 1798-were identical.¹⁶ The Kentucky legislature adopted Jefferson's first seven resolutions not only because they agreed with his reasoning, but also because they had come to the November session prepared to take steps in response to the demands of their constituents. Jefferson's draft simply saved them time in formulating a legislative protest against the Alien and Sedition Acts. Jefferson's draft through the first seven resolves was an expanded synthesis, exposition, and development of the protest resolutions passed by aroused citizens in their county meetings in Kentucky and Virginia. These former resolutions had already taken the step of declaring the Alien and Sedition Acts unconstitutional; Jefferson

¹⁵Appendix C, "Seventh Resolve."

¹⁶See Appendices A, B, and C.

supported these declarations with proof. He had prefaced his exposition with a declaration of the compact theory of the nature of the union, and the Kentucky legislators accepted this as basic to their Republican position on states' rights.

They could not agree with Jefferson's proposed remedy. He asserted that "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, . . . to nullify of their own authority all assumptions of power by others within their limits."¹⁷ His reasoning was that free governments are founded upon jealousy and not confidence; that "it is jealousy and not confidence which prescribes limited constitutions, to bind down those whom we are obliged to trust with power:"¹⁸ He called for the formation of committees of correspondence to transmit the resolutions to the legislatures of the several states, and challenged each state to concur with them in blocking the assumption of undelegated power by the general government. To refuse to do so would result in the surrender of a republican form of government and force the states to live under a government which derived its power from its own will and not that of the states.

¹⁷Ford, Writings of Jefferson, VII, 301; Jefferson's rough draft and final draft appear in parallel columns.

¹⁸Ibid., 304.

The Kentucky House of Representatives inserted an eighth resolve which called for their Senators and Representatives in Congress to seek the repeal of the Alien and Sedition Acts. This provision was derived from the form employed in the local protest resolutions, and was not included in the Jefferson drafts.

The Ninth Resolve adopted by the Kentucky legislature was a revised version of Jefferson's last resolution. The Governor was authorized to transmit the resolutions to the legislatures of the several states, Kentucky's loyalty was reaffirmed, their alarm at the assumption of power by the general government was expressed; but Jefferson's nullification doctrine was omitted. The Kentucky Legislature thus took a more moderate position than Jefferson desired, indicating that they either were not ready to assume that much authority, or that they believed that the resolutions would be more acceptable if the nullification provision were removed. In any case, the exposition of the nullification doctrine was postponed until the next year, when it appeared as the central provision of the Kentucky Resolutions of 1799.

The appearance of the word, nullification, in the Kentucky Resolutions of 1799 and Jefferson's drafts of 1798 has given rise to a multitude of opinions concerning the influence of the Kentucky Resolutions on the nullification crisis of 1832. On one side, there are those who claim that Jefferson was the originator of the doctrine and that Kentucky came to accept it as the only solution. Opposing this group are

those who assert that Jefferson was not thinking of nullification in terms of an action by one state, but by the joint action of the several states acting in concert, and that secession was not part of his thinking.

Among the former group, Robert Y. Hayne, John C. Calhoun, and their followers were the first to claim that the Kentucky Resolutions were the basis for their doctrine of nullification. During the Hayne-Webster debate in the Senate, Hayne referred to the resolutions of 1798 and 1799 (including those passed by Virginia in 1798), as the historic foundation for the reasoning that he was advancing. Edward Everett refuted this position in an article for the North American Review, asserting his surprise that the "resolution of Kentucky in 1799, should be thought to hold out a warrant, for the new South Carolina doctrine of a right to suspend or annul the action of a law of the General Government."¹⁹ He reasoned correctly (this writer believes) that the Kentucky Resolutions of 1799 were entered as a protest rather than an actual act of nullification. Everett's argument was bolstered by a letter from James Madison, refuting the assertion that the Kentucky and Virginia Resolutions were the basis for South Carolina's nullification proclamation. Madison claimed that the main object of the Kentucky and Virginia Resolutions was to protest

¹⁹Everett, North American Review, pp. 504-505.

the Alien and Sedition Acts by declaring them to be unconstitutional. He pointed to the replies of the several states as proof of this, asserting that if nullification had been their object, the replies would have reflected this. It was his opinion that had "the Resolutions been regarded as avowing and maintaining a right, in an individual State, to arrest, by force, the execution of a law of the United States, it must be presumed that it would have been a conspicuous object of their denunciation."²⁰

In 1836, John Quincy Adams wrote to Edward Everett, then Governor of Massachusetts, that Madison was right in disavowing that the Virginia Resolutions were the basis of the South Carolina nullification doctrine, but wrong in claiming the same position for those from Kentucky. Adams argued that Madison's Virginia Resolutions merely claimed for the states the right to interpose their legal arm of protection between the general government and the people. On the other hand, Jefferson's Kentucky Resolutions clearly assumed the right of nullification for the states. He declared that:

With regard to the interposition of the State Legislatures, to withstand or controul [sic] the

²⁰Ibid., p. 546; Hunt, Writings of Madison, IX, 403.

unconstitutional Legislation of Congress, there was a wide difference of opinion between Jefferson and Madison. I believe them both to have been in error, but the error of Madison was comparatively harmless . . . his explanations to Governor Hayne and to you, reducing his right of interposition by the State Legislatures to mere declarations, remonstrances, and arguments, have none of the deadly venom of Jefferson's nullification . . . Jefferson was the father of South Carolina Nullification, which points directly to the dissolution of the Union.²¹

In 1898, a scholar took the position that "The exposition of these nullifying resolutions, as given by Jefferson himself, shows that it was not by any means desired to weaken the federal Union; but to express a general right of the States to prevent unjust and unconstitutional assumptions of Congressional power." He interpreted the nullification statement more as an appeal to the people, as states acting in concert, to "cooperate in nullifying malign legislation, Neither Virginia nor Kentucky proposed that separate action which would constitute revolution."²² Such was the case with South Carolina's nullification of the tariff of 1832; yet it hardly seems reasonable to assume that Jefferson was advocating such a radical action. He certainly was not thinking in terms of disunion, for he had written to John

²¹ John Quincy Adams to Edward Everett, October 10, 1836, edited by Ralph L. Ketcham, and cited in "Jefferson and Madison and the Doctrine of Interposition and Nullification," Virginia Magazine of History and Biography, LXVI (April, 1958), 182. Ketcham is an associate editor of the Madison Papers. The original of this letter is preserved in the Everett Papers at the Massachusetts Historical Society.

²² Edward Payson Powell, Nullification and Secession in the United States (New York, 1898).

Taylor prior to his drafting the resolutions, that "if on a temporary superiority of the one party, the other is to resort to a scission [sic] of the Union, no federal government can ever exist."²³ Later, after drafting his set of protest measures, Jefferson wrote to Taylor that he was, for the present, "for resolving the alien and sedition laws to be against the constitution and merely void, and for addressing the other states to obtain similar declarations"²⁴ Believing that concerted action by the several states, once they came to realize that the Alien and Sedition Acts were contrary to the Constitution, would be sufficient to secure a repeal of those acts, Jefferson had no intention of secession as the final remedy. He believed that the several states possessed the natural right to judge whether an act of the national government was constitutional or not, but he arrived at this conclusion because he believed that the states were the locus of sovereignty. Nowhere does it seem that he was speaking in terms of nullification by one individual state.

Robert McNutt McElroy, an early Twentieth Century historian, writing to clear Kentucky of any connection with

²³Thomas Jefferson to John Taylor of Caroline, June 1, 1798, Thomas Jefferson Randolph, editor, The Writings of Thomas Jefferson (Charlottesville, 1829), III, 393-394.

²⁴Thomas Jefferson to John Taylor of Caroline, November 26, 1798, Ibid., III, 404.

the South Carolina doctrine of nullification, followed the line of reasoning pursued by John Quincy Adams, and placed the onus of guilt on Jefferson. He concentrated on the resolutions passed in 1798, passing over those of 1799, and declared that although the Jefferson drafts contained the doctrine of nullification (as exemplified by South Carolina in 1832), no such doctrine was to be found in the Kentucky Resolutions of 1798. He believed they clearly set forth the doctrine of states' rights, but their primary object was the repeal of the Alien and Sedition Acts. On the other hand, Jefferson's drafts looked clearly to the nullification of these acts, either by one or the several states. He concluded that "the Jefferson draft, . . . and not the Kentucky Resolutions [of 1798] must stand as the logical antecedent of the South Carolina doctrine" ²⁵ The doctrine of nullification did appear, however in the Kentucky Resolutions of 1799, as the one reservation the state insisted on maintaining. McElroy's failure to take this into account weakened his argument.

Beginning with Frederic Bancroft in 1928, the trend toward absolving Jefferson of blame for the nullification and secession crisis became the accepted position. Bancroft wrote that "Jefferson evidently intended them for political effect,

²⁵McElroy, Kentucky in the Nation's History, pp. 249-250.

and merely to secure legislative resolutions expressing the opinion that the hated laws were unconstitutional . . . actual nullification by a state singly was wholly foreign to his purpose."²⁶ He was echoed by Gilbert Chinard in 1929, who maintained that "it was not Jefferson's intention to promote a rebellion of certain States against the Federal Government and to provoke a secession."²⁷ Later, in 1948, Adrienne Koch and Harry Ammon completed their thorough study of both the Virginia and Kentucky Resolutions, and accused the political theorists and historians of the Nineteenth Century of misreading and misusing the documents in "contexts subtly foreign to the original intent."²⁸ Nathan Schachner, in an extensive study of Jefferson's role in the Kentucky Resolutions, pursued the opposite reasoning and came to the conclusion that the Kentucky Resolutions were "no mere indignant reaction to a particular situation;" but rather a "carefully conceived statement of a philosophical position that went to the roots of the American federal system and was not finally overthrown until the land was drenched with blood and agony."²⁹

Dumas Malone, writing in 1962, asserted that the "primary purpose of the resolutions . . . was to meet an immediate

²⁶Frederic Bancroft, Calhoun and the South Carolina Nullification Movement (Baltimore, 1928), p. 80.

²⁷Gilbert Chinard, Thomas Jefferson: The Apostle of Americanism (Boston, 1929), p. 347.

²⁸Koch and Ammon, p. 147.

²⁹Nathan Schachner, Thomas Jefferson: A Biography, 2 vols. (New York, 1951), II, 611.

political situation to focus attention on the Alien and Sedition Acts and make them the major issue of the hour."³⁰ Thus, from 1830 to the present, the question has not been completely answered. It remains that Jefferson alone knew the extent to which he meant the Resolutions to go. The statement of nullification exists in both the Jefferson drafts and the Kentucky Resolutions of 1799, and what is equally important, the nullificationists of the 1830's believed that the existence of these statements provided them with a historical basis for their position, whether this was Jefferson's intention or not.

It seems safe to say, however, that the Kentucky Resolutions of 1798 and 1799 were intended to be more than just political propaganda, or just a spirited defense of civil liberties. They must also be considered as documents of major constitutional interest. The constitutional theories which they advanced have had far-reaching effects on the course of American History. It seems reasonable to assume that they were intended to serve both as political propaganda and constitutional theory.

³⁰Dumas Malone, Jefferson and the Ordeal of Liberty, Volume III of Jefferson and His Time (Boston, 1962), p. 402.

CHAPTER IV

CONTEMPORARY REACTIONS TO THE KENTUCKY RESOLUTIONS

In 1900, Frank M. Anderson wrote that "Enough and more than enough has been written about the authorship of the resolutions and their ultimate object; but little if any serious effort has been made to ascertain what the people of the United States thought about them."¹ His point is well taken, for the primary significance of the Kentucky Resolutions lies in the opinions that contemporary legislatures, newspapers, and individuals held concerning them. It is not enough to know that they were drafted as a protest against the Alien and Sedition Acts, or that they are "an episode in Jefferson's and Madison's defense of civil liberties."² They must be considered within the context of their times, and in light of contemporary opinions.

The Kentucky Resolutions passed the Kentucky Legislature with almost unanimous concurrence. The one dissenting voice was that of William Murray, a staunch Federalist serving in that state's House of Representatives. On November 9, 1798, the day after John Breckinridge moved the resolutions, he took

¹Anderson, "Contemporary Opinion," p. 45.

²This is the primary thesis of Adrienne Koch and Harry Ammon in their article written for the William and Mary Quarterly, April, 1948.

the floor to question Kentucky's right to censure acts of the federal government. Murray said that he regretted the manner in which the subject had been taken up in Kentucky, and that he was opposed to the resolutions.³ Breckinridge answered that

the Alien and Sedition acts were agreed to be impolitic and therefore censurable; if this be so, then unconstitutional acts could certainly be censured, even declared void. The power of the central government is derivative from either the people or the state legislatures. . . . If then the general government should transgress the limits prescribed to them by the constitution, how are they to be restrained? Are they to be restrained by themselves? Is their discretion to be the only measure of their powers? . . . The legislature is the constitutional and proper organ through which the will of the people is known,

If Congress is to receive no censure from the state legislatures, from whom is censure to come?⁴

The crux of Breckinridge's argument was that if Congress had any virtue at all, it would, on the appeals from the states, repeal these unconstitutional proceedings. His opinion, like Jefferson's, was that it was the states' prerogative to censure the government they had created through voluntarily entering into the compact, and that it was the duty of the federal government to respond by repealing the obnoxious act or acts. In all probability, this was the concept of nullification held by both Jefferson and Breckinridge.

³Palladium (Frankfort, Kentucky), November 13, 1798, p. 3.

⁴Ibid., pp. 3-4.

The majority of the people in Kentucky were probably in favor of the Resolutions of 1798. The passage of the local protest resolutions indicates that a large section of the populace was aroused by the passage of the Alien and Sedition Acts. One correspondent, writing to his friend in Virginia, reflected the general attitude in Kentucky:

The great body of the people here think and act as they did in the year 1776, in the Atlantic states: what was political heresy there at that time, is held so here at this time. . . . They attach certain meanings to certain words; and they still hold that there is a right and wrong side to a position; I do believe that nineteen-twentieths are of the republican degree.--The state legislature met last week; I enclose you some resolutions now before them, and which I am sure⁵ will pass, with little or no opposition

Thus Kentucky proved to be a good choice for the introduction of the protest resolutions. Republican sentiments were strong, and the leadership of such men as John Breckinridge and George Nicholas served to strengthen the cause in that state.

North Carolina, the state originally selected by Jefferson and Wilson Cary Nicholas for the introduction of the resolutions, was the first state to act on the documents sent by the Kentucky Legislature. Changes in the political balance of the North Carolina Legislature and Breckinridge's trip to

⁵Aurora (Philadelphia), December 14, 1798, pp. 2-3.

Virginia in the fall of 1798 resulted in the Resolutions being introduced in Kentucky instead of North Carolina. This proved to be fortuitous for the Republican cause, for on December 22, the North Carolina Senate ordered the Kentucky Resolutions to be laid on the table, insuring that no action would be taken on them.⁶ Governor William R. Davie introduced them to the House of Commons on December 21, and that body promptly referred them to the Senate.⁷ One legislator recorded that

Two or three days ago the Governor laid before the House of Commons a string of resolves from Kentucky, prefaced with a most indecent and violent Phillipic on the measures of the General Government. The Commons sent them up to the Senate who after, . . . hearing them read ordered them to lie on the Table and I believe in the temper they were in, might easily have been prevailed on to have thrown them into the fire, which was proposed in whispers by several near me.⁸

The approximate composition of the North Carolina legislature can be seen in the votes taken on a measure protesting the Alien and Sedition Acts. On December 24 the petition passed the House of Commons by a vote of fifty-eight to twenty-one.⁹

⁶North Carolina, Journal of the Senate, November Session (Wilmington, 1798, Evans #34245), p. 64; Commercial Advertiser, January 16, 1799, p. 3.

⁷North Carolina, Journal of the House of Commons, p. 70.

⁸Blackwell P. Robinson, William R. Davie (Chapel Hill, 1957), p. 303; citing a letter from Samuel Johnston to James Iredell.

⁹North Carolina, Journal of the House of Commons, p. 78.

The Senate defeated it by a vote of thirty-one to nine.¹⁰ If the votes were cast on strictly party lines, it is easy to see that the Jefferson resolutions would not have been adopted. The vote count would seem to indicate that the Republicans had a majority in the House of Commons, while the Federalists controlled the Senate and had a strong minority in the House. The Kentucky Resolutions, then, were accepted by the House, referred to the Senate, and defeated by the Federalist majority in that body.

In Maryland, the Kentucky Resolutions were referred to a committee in the House of Delegates. The committee report, passed on December 28, 1798, declared that

the said resolutions contain sentiments and opinions unwarranted by the Constitution of the United States, and the several acts of congress to which they refer; that said resolutions are highly improper, and ought not to be acceded to by the legislature of this state.¹¹

The vote on the report was fifty-eight to fourteen. The House of Delegates referred the committee report to the Senate, but no action was taken by that body. The report and proceedings were not transmitted to Kentucky since it was only the opinion of a committee, and that opinion being that the state should not consider the resolutions formally. The House also defeated a petition to declare the Alien and Sedition

¹⁰State Gazette of North Carolina (Edenton), January 2, 1799, p. 3.

¹¹Maryland, Journal of the Votes and Proceedings of the House of Delegates, November Session, 1798, p. 48.

Acts unconstitutional, forty-six to nineteen, giving some general indication of party representation, with the Republicans being a weak minority.¹² It appears that the votes and proceedings in the Maryland Legislature were as much an affirmation of the Alien and Sedition Acts as a rejection of the Kentucky Resolutions.

During this same time, a similar debate was proceeding in Congress. On December 11, Representative Robert Goodloe Harper, a Federalist from South Carolina, introduced a bill to distribute, at government expense, copies of the Alien and Sedition Acts throughout the states. He declared that the "ferment which had been raised, and sedulously kept up . . ." was a result of misunderstanding and a misrepresentation of the Alien and Sedition Acts.¹³ He claimed that certain resolutions, referring to those from Kentucky, "had every appearance of being founded upon a letter written by a member of Congress, which letter he had read, and which contained . . ." misrepresentations, although not willful ones.¹⁴ Continuing, he asserted that he supposed these resolutions surely meant armed opposition and that the best way to counteract these designs "was to give the people correct information with respect to these laws."¹⁵ Rising to the defense, Albert Gallatin of Pennsylvania stated that "as long as the people

¹²Ibid.; Green Mountain Patriot (Peacham, Vermont), January 31, 1799, p. 3.

¹³Annals of Congress, Fifth Congress, Third Session, 2426.

¹⁴Ibid., 2429-2430.

¹⁵Ibid., 2430.

confined themselves to an expression of their opinions on the measures of Government," he saw no danger of an armed opposition to the laws.¹⁶ He was refuted by John Rutledge of South Carolina, who declared that certain gentlemen had declared the Alien and Sedition Acts unconstitutional, and expressed their wish that the people would resist its execution.¹⁷ Rutledge asserted that his constituents had been told by these gentlemen that "to rebel against these laws which invaded their constitutional rights, was a duty they owed their country."¹⁸ The House of Representatives voted to print and distribute twenty-thousand copies of the Acts.

The House resolved itself into a committee of the whole on February 5, 1799, to hear a report from the select committee on petitions for the repeal of the Alien and Sedition Acts.¹⁹ The report stated ". . . in the first place, that the constitution was made for citizens, not for aliens, who of consequence have no rights under it," ²⁰ It was the opinion of the select committee that "the necessity that dictated these acts . . . still exists," and that "the alien and sedition acts, so called, form a part, and in the opinion of the committee, an essential part, in the precautionary and protective measures adopted for our security."²¹ The report was

¹⁶ Ibid., 2436.

¹⁷ Ibid., 2446.

¹⁸ Ibid.

¹⁹ Ibid., 2985.

²⁰ U. S. American State Papers, Miscellaneous, XXXVII, Document #110, Fifth Congress, Third Session (Washington, 1834), 182.

²¹ Ibid., p. 184.

accepted on February 21, 1799, placing the House clearly within the Federalist camp. Whatever the individual members of the House might think about the Kentucky Resolutions, that body went on record as being opposed to their principles and intent.

Delaware's House of Representatives received the Kentucky Resolutions on January 4, 1799. Governor Daniel Rogers introduced them and declared:

These resolutions seem to me, both by their language and object, to assume a form extremely hostile to the peace and happiness of the United States. According to my understanding, the legislature of that State undertake to exercise a power not vested in them, but which is expressly delegated to another Tribunal. If the laws of which they complain are unconstitutional, it belongs to the Judiciary, and not to any legislature, to declare them to be so.²²

Following the governor's message, the Speaker referred the Kentucky Resolutions to a committee. On January 7, the committee reported that "they consider the said resolutions as a very unjustifiable interference with the General Government and Constituted Authority of the United States, and a dangerous tendency, and therefore not a fit subject for the further consideration of this House."²³ The report lay on the table until January 9, when the motion was made to adopt it. The Republican minority promptly moved for a

²²Delaware, House of Representatives, Journal of the House of Representatives, January Session (Newcastle, 1799, Evans #35394), pp. 11-12.

²³Ibid., p. 14.

delay so that they might consider certain amendments. Their counter-resolution was that

it is the unalienable right and bounden duty of the several individual States, and of the citizens thereof, when they believe any acts of the Government . . . not to be warranted by the said instrument, to express their opinions of the same, respectfully to remonstrate against the same . . . for procuring a repeal of the same.²⁴

The Republican motion then declared the Alien and Sedition Acts unconstitutional and called for their repeal. This motion was defeated thirteen to three, the original report accepted by the same vote, and sent to the Senate.²⁵

The Delaware Senate was already aware of the Kentucky Resolutions, having read them from a newspaper on January 4.²⁶ On January 7, Representative Vining delivered Governor Rogers' message and a copy of the Kentucky Resolutions for consideration.²⁷ After some discussion, a motion was made to concur with the House committee report, but a motion to postpone passed instead.²⁸ On January 18, the Senate adopted an alternate report declaring simply that "the resolutions of Kentucky are improper, and not a fit subject for this legislature to further debate on."²⁹ This report was received by the House on January 21, read, disagreed to, and the original report of the House committee returned to the Senate.³⁰ On February 1, the

²⁴Ibid., pp. 26-27.

²⁵Ibid., p. 27.

²⁶Delaware, Senate, Journal of the Senate, January Session, (New Castle, 1799, Evans #35595), p. 6.

²⁷Ibid., p. 14.

²⁸Ibid., pp. 20-21.

²⁹Ibid., p. 39.

³⁰Delaware, Journal of the House of Representatives, January Session, 1799, pp. 59-60.

Senate reconsidered the original House report, and after a motion to include the Virginia Resolutions in the report was defeated, adopted it.³¹ Once again, by defeating any attempt to have the Alien and Sedition Acts declared unconstitutional, the vote of Delaware, like that of North Carolina and Maryland, was a vote of confidence for these measures as well as a censure of the Kentucky Resolutions. Although the constitutional implications were evident to these three state legislatures, they avoided debating them. Preferring to avoid the constitutional issue, these legislatures merely dismissed the Kentucky Resolutions as dangerous to the welfare of the country; thus regarding them as little more than Republican propaganda.

In New York, the Kentucky Resolutions were regarded as an outright declaration of open rebellion. The opinion was that the long suspected secession movement in the South and Old Southwest was at last a reality. The Commercial Advertiser observed that

a powerful effort is now making to weaken our councils, divide the people and prepare the way for civil dissensions, which must inevitably end in separating the south from the northern states, and ultimately place one division in the power of France, is but too apparent, from the late seditious proceedings of Kentucky,³²

³¹Delaware, Journal of the Senate, January Session, 1799, January Session, 1799, p. 83.

³²Commercial Advertiser, January 21, 1799, p. 3.

To Alexander Hamilton, the proceedings in Kentucky were simply justification of his distrust of the masses. He wrote to Senator Jonathan Dayton of New Jersey that "the late attempt of Virginia and Kentucky to unite the State legislatures in a direct resistance to certain laws of the Union, can be considered in no other light than as an attempt to change the government," and proposed as the best solution that "the subdivision of the great States is indispensable to the security of the general government, and with it the Union."³³

The Albany Centinel, in its annual address to its patrons stated:

May traitors, who our land disgrace,
Repentent, cease their varied crimes,
Or else may justice speed apace,
To adorn their necks with hempen lines.

Should 'Old Domain' and Kentuck's sons,
Dare to unshield the Rebel sword,
Soon may the pow'r of Freeman's guns
Sabdue [sic] the dark, seditious horde.³⁴

As expected, from the prevailing attitude in the state, the proceedings of the New York Legislature relative to the Kentucky Resolutions were stronger in tone than those in the states of North Carolina, Maryland, and Delaware. The New York Senate was the first council in the state legislature to receive a copy of the Kentucky Resolutions. On January 12, Governor John Jay transmitted them to that body, where they were read and referred to a committee.³⁵ The committee

³³Alexander Hamilton to Jonathan Dayton, 1799, John C. Hamilton, editor, The Works of Alexander Hamilton, 7 vols. (New York, 1850), VI, 384, 387.

³⁴Albany Centinel, January 1, 1799, (Evans #35089).

³⁵New York, Senate, Journal of the Senate, 22nd Session (Albany, 1799, Evans #35925). p. 15.

made its report on March 5. Abraham Van Vechten proposed the following resolutions:

Whereas the people of the United States have established for themselves a free and independent national government. And whereas it is essential to the existence of every government, that it have authority to defend and preserve its constitutional powers inviolate, inasmuch as every infringement tends to its subversion. . . . And whereas the Senate not perceiving that the rights of the particular states have been violated, nor any unconstitutional power assumed by the general government, cannot forebear to express the anxiety and regret with which they observe the inflammatory and pernicious sentiments and doctrines which are contained in the resolutions of the Legislatures of Virginia and Kentucky; sentiments and doctrines no less repugnant to the constitution of the United States and the principles of their Union, than destructive of the federal government, and unjust to those whom the people have elected to administer it.³⁶

The report disclaimed the right of any state legislature to sit in judgment on any act of the general government, while at the same time affirming its support of the Alien and Sedition Acts. The focal point of the report was, however, the constitutional implications of the Resolutions. The general government as envisioned in Federalist ideology was highly centralized and the right of a state to protest and censure the acts of the general government posed a threat to the security of the central government.

Republican Senator Ambrose Spencer proposed an amendment to counteract the Federalist-oriented committee report. This

³⁶Ibid., p. 66.

amendment sought not to abolish the position taken by the Federalists, but to weaken it to some degree. The Republicans of the New York Senate did not completely favor the sentiments of the Kentucky Resolutions, but they moved to protect them from total rejection, resolving:

that although they conceive themselves individually and in a Legislative capacity invested with the right of expressing their opinions upon the acts and proceedings of Congress; and that in cases of dangerous encroachments and innovations on the rights and sovereignty of the State Legislatures, it would become their bounden duty to mark and proclaim such encroachments and innovations; yet this committee most solemnly impressed with the importance and necessity of preserving harmony between the national and state governments, at the present eventful period, do not judge it expedient or proper to adopt the resolutions of³⁷ the states of Virginia and Kentucky,

The Senate defeated the Spencer amendment thirty-one to seven, and adopted the hostile Van Vechten report by the same vote. The passage of the report carried with it the instructions for the Governor to transmit it to Virginia and Kentucky.³⁸ The Republicans had tried to temper the Federalist-oriented report with moderation and the logic of expediency. They certainly desired the maintenance of the states' rights position, but strict party voting defeated them.

The General Assembly of New York did not receive the Kentucky Resolutions until January 30, 1799, but it acted

³⁷Ibid., p. 66.

³⁸Ibid., p. 67.

with more promptness than the Senate. On February 15, the Assembly resolved itself into a committee of the whole to receive the report of a special committee appointed to study the Resolutions.³⁹ This committee's opinion was:

That the right of deciding on the constitutionality of all laws passed by the Congress of the United States, appertains to the Judiciary department. That an assumption of that right by the legislatures of the individual states is unwarrantable, and has a direct tendency to destroy the independence of the general government.⁴⁰

The report urged that the General Assembly disclaim the authority assumed by Kentucky and Virginia in passing judgment on the Alien and Sedition Acts. The voting on the various motions, however, was rather even, and the report did not pass without some difficulty. Republican Assemblymen promptly moved to postpone consideration, but the motion was defeated, fifty-four to forty-two.⁴¹ They next introduced an amendment which declared that "the right of expressing an opinion on the constitutionality of all laws passed by the Congress of the United States, appertains not only to the judiciary department but also to the people, both as private individuals and as legislators; . . ."⁴² The proposal did not attempt to justify the Kentucky Resolutions, but it did call for a repeal of the Alien and Sedition Acts. It was

³⁹New York, General Assembly, Journal of the Assembly, 22nd Session (Albany, 1799, Evans #35924), p. 114.

⁴⁰Ibid.

⁴¹Ibid., p. 118.

⁴²Ibid., p. 120.

hoped that

the representatives of a great, free and enlightened nation will . . . perceive that the laws commonly known by the names of the alien and sedition laws are unconstitutional, . . . and consequently that they will without the solicitation of this House, immediately repeal the same.⁴³

The Federalist majority defeated the amendment fifty-eight to thirty-four. Succeeding Republican motions to delay consideration of the original report failed to pass, fifty-two to forty-one and fifty-three to thirty-nine.⁴⁴ The original motion passed on February 16, 1799, and was sent to Governor Jay.⁴⁵ Republicans in the Assembly also tried to steer a moderate course, but in each case they failed to secure the necessary votes.

In New York, the debate centered around the question of a state's right to declare an act of the federal government unconstitutional. The Federalist position was that this prerogative was reserved for the federal judiciary. The Empire State Republicans, more moderate than their Kentucky colleagues, attempted to justify a type of dual authority to be shared between the federal judiciary and the state legislatures.

The sentiment in New Jersey was decidedly Federalist, but there was a strong Republican minority within the state. The Centinel of Freedom, published in Newark, was the leading Republican newspaper in the state, and in its annual address

⁴³Ibid.

⁴⁴Ibid., pp. 121-122.

⁴⁵Ibid., p. 123.

to the patrons declared:

Oblivion's veil my muse would gladly draw
O'er ALIEN BILL and dire SEDITION LAW--

Some waking States th' Oppressor's pow'rs deny,
But some in stupid slumbers wish to lie.⁴⁶

Supporting the Federalist viewpoint, an orator before the Literary Society at Princeton remarked that "The Legislatures of Kentucky and Virginia have declared the [Alien] law to be void; and some of the patriotic representatives of the people have called upon their constituents to oppose it by force of arms."⁴⁷ The speaker believed that the Kentucky Resolutions were a declaration of rebellion, and visible evidence that the French were succeeding in their plan to separate the western states from the Union.

The General Assembly of New Jersey considered the Resolutions passed by Kentucky on January 18, 1799. After a first reading, the motion was made to dismiss them, and passed, twenty to fourteen.⁴⁸ Of those who voted nay on the motion to dismiss, three were from Essex County; three from Somerset; three from Suffix; two from Middlesex; two from Morris; and one from Hunterdon, indicating that Republican strength was centered in these counties. Concerning the proceedings of the General Assembly, the Trenton Federalist declared:

⁴⁶Centinel of Freedom, January 1, 1799, (Evans #35961).

⁴⁷Commercial Advertiser, February 21, 1799, p. 2.

⁴⁸New Jersey, General Assembly, Votes and Proceedings of the 23rd General Assembly of the State of New Jersey, Second Sitting (Trenton, 1799, Evans #35902), p. 11.

It is to be presumed that Virginia and Kentucky will not hereafter attempt to tamper with the legislature of New Jersey. Could the base men in these states (the people at large are innocent) who drafted those treasonable resolutions against the laws of congress for the punishment of seditious liars, and the removal of dangerous aliens, have witnessed the scene which occurred in the house of Assembly on Friday evening last, it is certain that all their hopes of exciting the state of New Jersey into a revolt against the national government would have been blasted forever.⁴⁹

In Pennsylvania, as in New York and New Jersey, the Kentucky Resolutions were first regarded as an attempt to incite rebellion against the federal government. The Philadelphia Gazette printed a dispatch from Salem, Massachusetts, which warned that:

there is reason to believe that the French have determined on an invasion of some of the southern states. It is not to be supposed that their designs are to be effected by any great armament from France, but the more sure and fatal operation of secret emmisaries who will combine the slaves with the enemies of our government in Virginia and Kentucky, and thus employ the force of the country in its own destruction.⁵⁰

John Ward Fenno, editor of the Gazette of the United States, in an editorial entitled "Fruits of French Diplomatic Skill," charged that French agents were engaged in "preparing the remote and unorganized parts in this country, for a revolt from the Union, and a subjection to France. The revolt has

⁴⁹ Reprinted in the Philadelphia Gazette, January 26, 1799, p. 3.

⁵⁰ Ibid., April 9, 1799, p. 3.

at length been brot about in the State of Kentucky. "51 The threat, real or imagined, of a French alliance with the western states occupied the minds of a majority of citizens during this period. The Kentucky Resolutions only served to magnify this fear. Robert Liston, England's minister to the United States, wrote to a friend in Canada that "In the interior of the country the declamations of the democratic faction on the constitutionality and nullity of certain acts of the legislature, have misled a number of poor ignorant wretches into a resistence [sic] to the laws."52 Fenno believed the Kentucky Resolutions were part of a larger, concerted plan to embarrass the measures of the government and dismember the Union.53

The Pennsylvania Legislature considered the constitutional aspects of the Resolutions on January 25, 1799, after receiving them from Governor Thomas Mifflin. The Senate promptly dismissed them by a vote of fourteen to eight.54 The House of Representatives read them and set February 5 for the second reading. On February 6, the committee appointed to study the Resolutions made its report, and after a first reading, the

⁵¹Gazette of the United States and Philadelphia Daily Advertiser, December 8, 1798, p. 3.

⁵²Kentucky Gazette, August 8, 1799, p. 1.

⁵³Gazette of the United States, January 3, 1799, p. 3.

⁵⁴Anderson, "Contemporary Opinion," p. 51.

House ordered it to lie on the table.⁵⁵ After the second reading on February 9, the Republicans introduced an alternate reply for consideration. The Republican document declared that "all just governments are founded on the authority of the people, and their will ought to be the supreme law of the land."⁵⁶ It condemned the Alien and Sedition Acts as "obnoxious to a majority of the citizens of this commonwealth," and, while not affirming the right of a state to declare acts of the general government null and void, did assert its right as an instrument of the people, to instruct its representatives in Congress as to the will of their constituents. The House defeated this alternate proposal, forty-two to twenty-six. The Federalists then introduced a resolution which censured Kentucky for assuming an authority not rightly hers, but a coalition of Republicans and moderate Federalists defeated the measure by a vote of thirty-nine to twenty-nine.⁵⁷ It is evident that neither the Federalists nor the Republicans desired to take an extreme position, and that both groups worked closely together to prevent the passage of such measures.

The House voted on each paragraph of the committee report. The Federalist majority carried the first four questions by its ten vote margin. The last paragraph passed unanimously,

⁵⁵ Pennsylvania, House of Representatives, Journal of the First Session of the Ninth House of Representatives of the Commonwealth of Pennsylvania (Philadelphia, 1799, Evans #36062), pp. 184-186.

⁵⁶ Ibid., p. 191.

⁵⁷ Ibid., p. 192.

receiving sixty-five votes.⁵⁸ A further amendment was proposed by the extreme Federeralists, declaring that the Kentucky Resolutions were calculated "to diffuse a spirit of discontent and dissatisfaction among the citizens of the United States, to weaken their confidence in the government . . . and to destroy every consideration of attachment and patriotism,"59 Moderate Federalists again joined with the Republican minority to defeat the amendment by a vote of thirty-three to thirty-one. The committee report, adopted on February 9, 1799, resolved that

in the opinion of this House the people of the United States have vested in their President and Congress, as well the right and power of determining on the intent and construction of the legislation, and the defence of the Union; and have committed to the supreme judiciary of the nation the high authority of ultimately and conclusively deciding upon the constitutionality of all legislative acts. The constitution does not contemplate, as vested or residing in the Legislatures of the several states, any right or power of declaring that any act of the general government is not law, but is altogether void and of no effect; and this House considers such declaration as a revolutionary measure, destructive of the purest⁶⁰ principles of our State and national compacts.

The Pennsylvania House thereby systematically refuted the arguments of the Kentucky Resolutions, viewing with concern "a disposition so hostile to her peace and dignity, as that

⁵⁸ Ibid., pp. 195-197.

⁵⁹ Ibid., pp. 197-198.

⁶⁰ Ibid., pp. 198-200.

which appears to have dictated the resolutions of the Legislature of Kentucky."⁶¹ The report especially disclaimed Jefferson's principle that "free governments are founded in jealousy," declaring that

such an opinion cuts asunder all the endearing relations of life, . . . Governments truly republican and free are eminently founded on opinion and confidence; . . . No portion of the people can assume the province of the whole, nor resist the expression of its combined will.⁶²

The House ordered the report to be transmitted to Kentucky, expressing the opinion of the Pennsylvania legislators that they could not concur with that state's action.

Since the Pennsylvania report soundly negated the Kentucky Resolutions, and the paragraph declaring that state's decision not to concur with Kentucky passed unanimously, it must be assumed that not only the Federalists, but also the Republican minority objected to the principles set forth in the Resolutions. The Republicans voted against the first four paragraphs, but concurred with the Federalists in rejecting the general nature of the Resolutions. The object of concern which united both parties was the threat of disunion. The Republicans had strong objections to the Alien and Sedition Acts, but they were more strongly opposed to

⁶¹Ibid.

⁶²Ibid.

nullification and the disruption of the Union.

The Massachusetts Senate adopted its reply on February 12, 1799, expressing the sentiment that the federal judiciary was the final arbiter in all cases arising under the Constitution, and declaring 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 as shall appear to them necessary to the interests or conformable to the wishes of the people, whom they represent.⁶³

The Senate voted on the question, and the report passed twenty-seven to two.⁶⁴ The House of Representatives concurred with the Senate by a vote of 116-29.⁶⁵ The question of the extent of a state's rights in censuring an act of the federal government was the central issue. The conspiracy theory was advanced by John Quincy Adams, who called the Resolutions the "tocsin of insurrection," but this attitude was not as widespread as that which viewed the Kentucky resolves as a serious constitutional doctrine.⁶⁶

The reply of the Rhode Island Legislature was similar to that of Massachusetts, taking issue with Kentucky's assumption

⁶³ Massachusetts, General Court, Resolves of the General Court, January Session (Boston, 1799, Evans #35795), pp. 57-59.

⁶⁴ Newburyport Herald, February 12, 1799, p. 3.

⁶⁵ Ibid., February 15, 1799, p. 3.

⁶⁶ John Quincy Adams to William Vans Murray, March 30, 1799, Worthington C. Ford, editor, The Writings of John Quincy Adams, 7 vols. (New York, 1913), II, 398.

of the right to declare acts of the federal government unconstitutional. The report resolved that "the Constitution of the United States vests in the federal courts, exclusively, and in the Supreme Court . . . ultimately, the authority of deciding on the constitutionality of any act or law of the United States."⁶⁷ The reasoning behind this declaration was that "for any state legislature to assume that authority would be blending together Legislative and judicial powers," which would threaten the security of the federal compact. If one state possessed the right, then all states possessed it, and in the event of conflict, the state with the superior strength of arms would dominate. Rhode Island reflected the general attitude of the smaller states that their rights were threatened by the larger states. For them, the only protection was in union, and to that end they were dedicated.⁶⁸

The Connecticut General Assembly resolved that "the attempt to form a combination of the Legislatures of the several states for the avowed purpose of controuling [sic] the measures of the Government is foreign to the duties of the State Legislatures."⁶⁹ The Assembly declared the Kentucky Resolutions to be "hostile to the existence of . . . national Union, and opposed to the principles of the Constitution; calculated

⁶⁷ Rhode Island, General Assembly, Resolutions of the General Assembly (Newport, 1799, Evans #35217), p. 17.

⁶⁸ Ibid.

⁶⁹ Connecticut, General Assembly, Acts and Laws, May Session (Hartford, 1799, Evans #35342), p. 31.

to subvert the Constitution and to introduce discord and anarchy."⁷⁰ Re-affirming their support of the Alien and Sedition Acts, the Connecticut legislators refused to concur with the Kentucky Resolutions and ordered that their report be transmitted to that state. This action met with the approval of Governor John Trumbull, who had requested that the Assembly reject the resolutions. He had declared his disapprobation of the Resolutions, but had expressed hope "that the hour of cool reflection will soon return to those states, when . . . they will themselves regret those acts, which an unreasonable jealousy or an unguarded passion, may have hurried them into."⁷¹ Trumbull's moderate attitude was offset by the more radical faction in the state. The Connecticut Courant delivered a bitter invective against the Kentucky Resolutions in its annual message to its patrons:

Beyond the Appalachian height,
 Let poor Kentucky shew her spite,
 Pass many a factious resolution,
 To guard the Federal Constitution,
 And calculate that foreign knaves,
 Will save her sons from turning slaves,
 And, 'tis at least worth Garrard's while,
 When laboring thus to raise a broil,
 To recollect one proposition--
A Governor can preach Sedition.⁷²

On June 8, 1799, Governor John Taylor Gilman of New

⁷⁰Ibid.

⁷¹Green Mountain Patriot, May 30, 1799, pp. 1,2.

⁷²Connecticut Courant, January 1, 1799.

Hampshire introduced the Resolutions to the joint session of of the state legislature. He remarked that the Resolutions appeared to be "of a very extraordinary nature," but declined to pass judgment prematurely. He did challenge the legislature to take such measures proper "for promoting the tranquility and prosperity of the people, . . . and . . . to preserve our common country from divisions, and the arts and designs of its enemies at home and abroad."⁷³ On June 11, the joint session responded to the governor's message, lamenting the fact that divisions existed, and that opposition had been made to acts of the general government. The legislators adopted the reply by a vote of 137-0.⁷⁴

The House of Representatives of New Hampshire considered the Resolutions on June 14, and unanimously adopted a report declaring that

the Legislature of New Hampshire unequivocally express a firm resolution to maintain and defend the Constitution of the United States 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 the State Legislatures are not the proper tribunals to determine the constitutionality of the laws of the General Government--that the duty of such decision is properly and exclusively confided to the judiciary department.⁷⁵

⁷³New Hampshire, House of Representatives, A Journal of the Proceedings of the Hon. House of Representatives, June Session (Portsmouth, 1799, Evans #35879), pp. 26-30.

⁷⁴Ibid., p. 35.

⁷⁵Ibid., pp. 60-61.

The report concluded by affirming the constitutionality of the Alien and Sedition Acts, declaring them to be highly expedient in the present critical situation. On June 14, the Senate considered the action of the House of Representatives, and on the following day concurred with that body.⁷⁶

If there was a Republican minority in New Hampshire, they either disclaimed the Kentucky Resolutions, or were not strong enough to voice their opinion. The Federalists carried the voting by reason of their majority. Little can be ascertained of Republican opinion. The central issue was the right of a state to assume the authority of censuring an act of the federal government. The New Hampshire legislators rejected Kentucky's states' rights position, and asserted the right of the judiciary to be the final arbiter of federal law. In declaring the Alien and Sedition Acts to be constitutional, the New Hampshire Legislature was guilty, however, of expressing a judgment of a federal law on the state level. If a state did not possess the right to declare a federal act unconstitutional, neither did it possess the right to declare that same act to be constitutional. In their haste to reject Republican doctrine, a majority of the Federalist-dominated state legislatures became entangled in the same offense for which they were denouncing their opponents.

⁷⁶ New Hampshire, Senate, A Journal of the Proceedings of the Honorable Senate, June Session (Portsmouth, 1799, Evans # 35882), pp. 41-42.

With regard to the Kentucky Resolutions, one scholar called Vermont the "banner state of Federalism."⁷⁷ Not only was Vermont one of the last states to take action on the Resolutions, but its reaction was one of the strongest and its reply one of the most thorough. The state was not completely Federalist-dominated, but the majority of the residents were of that persuasion. The Green Mountain Patriot summarized the general sentiment in its "Call of Independence":

Though faction deride,
Spurn virtue aside,
And determin'd resist Legislation;
John Adams our pilot,
Indignant will smile at,
And crown her intrigue with vexation.⁷⁸

Governor Isaac Tichenor introduced the Kentucky Resolutions on October 12, 1799, with his decided opinion that the Vermont Assembly should promptly dismiss them. He declared:

I have not the smallest hesitation in predicting that they will meet your decided disapprobation-- because they contain principles hostile to your best interests, and because I know you love your country, and are rationally attached to the principles of our excellent federal constitution.⁷⁹

The Vermont legislators accepted the governor's charge, and replied that they would give the Resolutions the "treatment which, after mature deliberation, we shall judge they merit."⁸⁰ They affirmed their attachment to the Union, and declared that

⁷⁷Anderson, "Contemporary Opinion," p. 231.

⁷⁸Green Mountain Patriot, April 24, 1799, p. 4.

⁷⁹Vermont, General Assembly, Acts and Laws Passed by the Legislature, October Session (Bennington, 1799, Evans #36613-36617), p. 10.

⁸⁰Green Mountain Patriot, November 14, 1799, p. 4.

any sentiment or measure tending to the subversion of the Constitution would "be considered hostile to our best interest and ever meet our marked disapprobation. Let Constitutional Rights be forever sacred and disorganizing principles eternally detested!"⁸¹ It is interesting to note that both parties believed, or at least claimed, that they were defending the Constitution. The Republicans were protecting its strict construction while the Federalists were protecting it from the Republican masses and the doctrine of states' rights.

After both the Kentucky and Virginia Resolutions had been read in the General Assembly, Republican Udney Hay of Underhill took the floor to introduce a measure calling for the printing of the Kentucky and Virginia Resolutions, and the Alien and Sedition Acts. These were to be distributed among the legislators and the residents of the state. Hay reasoned that as approximately one-fifth of the Union had declared the Alien and Sedition Acts unconstitutional, and as the Sedition Bill passed the United States House of Representatives by only a forty-four to forty-one margin, and as the Vermont Legislature had pledged to "maturely consider" the Resolutions, the legislators owed it to their constituents to be well informed of the issued involved.⁸² It was his intention to get the Resolutions

⁸¹Ibid.

⁸²Ibid., December 6, 1799, p. 2.

before the people of the state, but the Federalist majority defeated his motion by a vote of 104-55.

In considering the Kentucky Resolutions, the Vermont legislators began with the assertion that the Resolutions had been maturely considered, and with the declaration that they were giving their opinion, as requested, without disguise. Taking up the First Resolve, Vermont declared that "the old confederation, . . . was formed by the State Legislatures, but the present Constitution of the United States was derived from an higher authority. The People . . . formed the federal Constitution, and not the States, or their Legislatures." The Second Resolve was considered, the assemblemen's reply was in the form of a question, asking "If as a State, you have a right to declare two acts of the Congress . . . unconsti-tutional, and therefore void, you have an equal right to declare all their acts unconstitutional Would not this defeat the grand design of our Union?" To the Fourth Resolve they replied that they "ever considered, that the constitution of the United States was made for the benefit of our own citizens. We never conjectured, that aliens were any party to the federal compact. We never knew that aliens had any rights among us." Attacking the Sixth Resolve, Vermont queried: "Do not the common principles of self defense, enable a government to arrest such emissaries [aliens], and send them from the country, if only suspected of designs hostile to the public?" In conclusion, the Vermont Legislature rejected the Ninth Resolve in its entirety, especially its criticism

of Presidential powers and the Jeffersonian principle that free governments are founded on jealousy and not confidence.⁸³

Although the Federalists controlled the Vermont House of Representatives, there was a strong Republican minority, and this minority lodged its formal protest of the proceedings on the Kentucky and Virginia Resolutions. Udney Hay again led the opposition forces, laying before the House on November 5, a statement of reasons which influenced the minority in its voting on the Resolutions. Representing the view of the fifty who voted in the negative, the protest declared that their dissent was based on (1) failure of the Vermont Legislature to "maturely consider" the Resolutions, and the refusal to have the documents printed for consideration by the members; (2) their opinion that the Sedition Bill was calculated to "create unnecessarily, discontents and jealousies, at a time, when our very existence as a nation may depend on our union;" (3) their belief that the Alien bill gave too much power to the President; (4) their objection to the restrictive wording of the replies; and (5) their decided opinion that it was the responsibility of the states to guard the Constitution.⁸⁴ They emphasized that they could not advocate any rebellion on the part of any state, but that when a federal law infringed

⁸³Ibid., November 7, 1799, p. 3.

⁸⁴Vermont, General Assembly, Journal of the General Assembly of the State of Vermont, October Session (Hartford, Opinion," pp. 249-252.

upon the rights of a state, that state had the right to question the constitutionality of the act.

The reply of the Vermont Legislature and the protest of the Vermont minority stand out as striking examples of the character of the debate over the Kentucky Resolutions. Basically the primary question was that of states' rights, with the central focus on the nature of the compact and the locus of sovereignty.

The last state to act on the Kentucky Resolutions was Georgia. The Resolutions had been referred from the January and June Sessions, and when the legislature met in November, 1799, the question was still before them. The Senate therefore drafted a resolution declaring that

to advise an approbation of those acts [Alien and Sedition], as some states seem to have done, would be to speak a language foreign to their hearts; but the committee hope that they will be repealed without the interposition of the state legislatures; they cannot; however, forbear expressing their sentiments on them, so far as to declare, that if the American government had no greater hold on the people's allegiance and fidelity, than those acts, it would not rest on that firm foundation which the committee hope and trust it does, and ever will, on the affections of the citizens over whom it presides;⁸⁵

The Senate transmitted the report to the House of Representatives and the House adopted it, twenty-one to sixteen. Not wanting

⁸⁵ Georgia, House of Representatives, Journal of the House of Representatives, November Session (August, 1799, Evans #35707), p. 48.

to offend either the Federalists or Republicans, the report took a moderate view, neither condoning the Kentucky Resolutions nor praising the Alien and Sedition Acts. Georgia was a southern state, and as such, a natural ally of Virginia and Kentucky. The state was also largely of the Federalist persuasion, though not as extreme as some of the New England states.

Undoubtedly Jefferson and his Republican colleagues misread the temper of the American people. In the Federalist-dominated states the Resolutions met with emphatic expressions of disapproval. The Federalist states replied either by drafting counter-resolutions, or by dismissing the resolves without discussion. In states where there was a strong Republican minority the reaction was more moderate than in those states where the Federalists were completely dominant. The replies served the purpose of not only disclaiming the principles of the Kentucky Resolutions, but also of declaring the Alien and Sedition Acts to be constitutional, necessary, and expedient. The central point of disagreement was the remedy proposed by Kentucky, that the states possessed the right to pass on the constitutionality of an act of the federal legislature. While the Republican minorities certainly endorsed the Kentucky Resolutions as a protest against the Alien and Sedition Acts, their actions indicate that they were

loathe to completely accept the extreme position of Kentucky in regard to its proposed remedy.

The Kentucky Resolutions were grounded upon the theory that the Union was the result of a voluntary compact, to which each state acceded as a state. Only the Vermont Legislature called attention to this theory in its reply. The doctrine of nullification, which derived its authority from the compact theory, while deleted from the Kentucky Resolutions of 1798, appeared in the Resolutions of 1799. Since no replies were made to the Kentucky resolves of 1799, it is impossible to know precisely what the reaction would have been to this provision. From the temper of the replies to the Resolutions of 1798, however, it can be assumed that the nullification doctrine would have been soundly disclaimed. It can also be assumed that neither the Republicans nor Federalists had an adequate comprehension of the ultimate results to which the development of the doctrine would lead.

The central issue was a constitutional one, as the replies indicate. There certainly was political propaganda involved, but from all indications the people realized that the major issue was that of states' rights questions revolving around the nature of the union and the extent of federal powers. The Kentucky Resolutions met with disfavor because the people cherished the Union and feared the consequences of the proposed states' rights doctrine.

CHAPTER V

CONCLUSION

The Kentucky Resolutions must be considered in both their immediate context and their larger historical context; both as a protest against the Alien and Sedition Acts in 1798, and as a formal declaration of states' rights and the doctrine of nullification. In immediate application, they represent a spirited defense of civil liberties and an effective medium of Republican propaganda. In a broader historical sense they can be viewed as the crux of the nullification crisis.

They were produced as the Republican response to the principal Federalist attempt to restrict and hamper activities of political opponents as well as the political participation of alien residents. The Federalists feared a western insurrection and the possible alliance of that section with France. The local protest meetings in Kentucky and the adoption of the Kentucky Resolutions of 1798 only served to satisfy their suspicions. The Republicans, on the other hand, regarded the Alien and Sedition Acts as part of a Federalist plan to establish a monarchy in America. The conflict was not only political, but sectional, and in another sense, economic, for Kentucky realized that war with France would close the Mississippi River to her commerce.

Thomas Jefferson drafted the Kentucky Resolutions of 1798, entrusted them to Wilson Cary Nicholas who in turn put them in the hands of John Breckinridge. Breckinridge carried the resolutions from Virginia to Kentucky where, after considerable revision, he introduced them before the Kentucky Legislature. The most important revision was the deletion of the nullification section in Jefferson's draft.

The Kentucky Legislature transmitted the Resolutions of 1798 to the legislatures of the several states where, with the exception of Virginia, they were met with disfavor and contempt. The people at large generally regarded them as part of the Jacobin plot to dismember the Union, or as a Republican measure to discredit and destroy the Constitution. A number of the states laid the Kentucky Resolutions on the table until the legislature adjourned or dismissed them without discussion or reply. Those states which did respond, usually undertook to refute the principles of the resolutions from a constitutional viewpoint. Their answers did much to clarify the conflict over the nature of the Union, the extent of state and federal powers, and the right of a state legislature to censure an act of the federal government or judge its constitutionality.

In an attempt to give emphasis and reinforcement to the position taken in 1798, the Kentucky Legislature passed the Resolutions of 1799 (not drafted by Jefferson). Aside from

a statement reaffirming Kentucky's loyalty to the Constitution, and disappointment in the reactions of her sister states, the central object was to reserve the right of nullification for the states as their means of checking the monarchical tendencies of the central government. From the existence of the nullification provision in Jefferson's drafts of 1798, and the Kentucky Resolutions of 1799, the nullificationists of the 1830's correctly, or incorrectly, derived their own doctrine of nullification by a single state, with secession as the ultimate reservation. From all available evidence, it seems that Jefferson was not thinking of nullification in the same sense that the South Carolinians later did, for his letters and drafts reveal a great attachment for the Union. His primary purpose was to protest the assumption by the federal government of rights reserved to the states and restricted from the general legislative body of the nation. At the same time, he formulated the states' rights position and provided the Republican Party with a rallying point.

The Kentucky Resolutions of 1798 overshadowed those passed in 1799, because the latter were not transmitted to the several states, did not request any type of reply, and were obscured by the death of George Washington and the period of national mourning.

The permanent historical significance of the Kentucky Resolutions lies in the constitutional theories they advanced,

in their capacity as a defense of civil liberties and in their value as Republican Party propaganda. To be understood in this their most correct sense they can neither be separated from their historical frame of reference, nor from their influence on American History.

APPENDIX A

JEFFERSON'S ROUGH DRAFT*

1. Resolved that the several states composing the U. S. of America did are not united on the principle of unlimited submission to their general government; but that by compact under the style & title of a Constitution for the U. S. 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, it's acts are unauthoritative, void & of no force.

That to this compact each state acceded as a state, and is an integral party, it's co-states forming as to itself, the other party.

~~That the constitutional form of action for this commonwealth as a party with respect to any other party is by it's organized powers & not by it's citizens in a body.~~

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 it's discretion, & not the constitution, the measure of it's 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 & measure of redress.

2. Resolved that, one of the Amendments to the Constitution having declared 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, the act of the Congress of the U. S. passed on the 1st day of July 1798, intituled 'An act in addition to the act intituled an Act for the punishment of certain crimes against the U. S.' which does abridge the freedom of speech & of the press, is not law, but is altogether void and of no force.

2. Resolved that, the Constitution of the U. S. having delegated to Congress a power to punish treason, counterfeiting the securities & current coin of the U. S. and piracies &

*The sections scored or crossed-out represent Jefferson's own corrections.

felonies committed on the high seas and offences against the law of nations, and no other crimes whatsoever, 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. S. by the constitution, or prohibited by it to the states, are reserved to the states respectively, or to the people,' therefore also, the same act of Congress passed-by-Congress on the 14th day of July 1798, and intituled 'an Act in addition to the act intituled an Act for the punishment of certain crimes against the U. S.' 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 U.S.,' (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, & punish such other crimes is reserved, and of right appurtains solely and exclusively to the respective states, each within it's own territory.

3. 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 U. S. 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 U. S. by the constitution, nor prohibited by it to the states, all lawful powers respecting the same did of right remain, & were reserved to the states or the people: 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 these 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 U. S. of the freedom of religious opinions and exercises, & retained to themselves the right of protecting the same, as this state by law passed on the general demand of it's citizens had already protected them from all human restraint and interference. And that in addition to this general principle & the express declaration, another & 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 of the press' thereby guarding in the same sentence and under the same words the freedom of religion, of speech & of the press, insomuch that whatever violates one either throws down the sanctuary which covers the others, and that putting-withholding libels, falsehood and defamation equally with heresy & false religion are withheld from federal the cognisance of the federal tribunals, that therefore the act of the Congress of U. S.

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 U. S.' 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 U. S. 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. S. 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 U. S. 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 & 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, 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 U. S. as is undertaken by the 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 process of law'; and that another having provided that 'in all criminal cases prosecutions the accused shall enjoy the right to a public trial, by an impartial jury, to be informed of the nature & 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 defence' the same act undertaking to authorise the President to remove a person out of the U. S. 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 hearing 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 U. S. as is undertaken by the same act concerning aliens, is against the article of the constitution which provides that 'the judicial power of the U. S. shall be vested in courts the judges of which shall hold their offices during good behavior,' and that the s'd 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 the Legislative proceed.

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 U. S. which delegate to Congress a power 'to lay & collect taxes, duties, imposts, & excises, to pay the debt and provide for the common defence and welfare of the U. S.' and 'to make all laws which shall be necessary & proper for carrying into execution the powers vested by the constitution in the government of the U. S. or in any department or officers 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 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 the instrument. That the proceedings of the general government under colour of these articles, will be a fit and necessary subject of revisal & correction at a time of greater tranquility, while those specified, in the preceding resolutions, call for immediate redress.

8. Resolved that a committee of conference & 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 for 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 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 & meaning in which it was understood & acceded to by the several parties, it is sincerely anxious for it's preservation. That it does also believe that to take from the states all the powers of self-government, & transfer them to a general &

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 it's co-states are to submit to undelegated & consequently unlimited powers in no man, or body of men on earth: ~~that-it-ought-not~~ 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 (casus non foederis) [sic] 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 & respect for it's 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, & solely authorised to judge in the last resort of the powers exercised under it; Congress being not a party, but merely the creature of the compact & subject as to it's assumptions of power to the final judgment of those by whom & for whose use itself and it's powers were all created and modified, that if those 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, but they may transfer its cognisance to the President or any other person, who may himself be the accuser, counsel, judge & jury, whose suspicions may be the evidence, his order the sentence, his officer the executioner, & his breast the sole record of the transaction: that a very numerous & 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 for us all, no rampart now remains against ~~the-will-and~~ the passions and the power 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, & counsellors of the states nor their other peaceable inhabitants who may venture to reclaim the constitutional rights and liberties of the states and the 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 elections 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 it's 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 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 so 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 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 & it's laws had pledged hospitality & 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 & justice: in questions of power then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the constitution. That this commonwealth does therefore call on it's 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, authorised by the federal compact? And it doubts not that their sense will be so enounced as to prove their attachment unaltered to limited government whether general or particular; & that the rights & liberties of their co-states will be exposed to no dangers by remaining embarked in a common bottom with their own: But ~~that-however confident at other times this commonwealth would have been in the deliberate judgment of the co-states and that but one opinion would be entertained on the unjustiable character of the acts herein specified, yet it cannot be insensible that circumstances do exist, & that passions are at this time afloat which may give a bias to the judgment to be pronounced on this subject, that times of passion are peculiarly those when precedents of wrong are yielded to with the last caution, when encroachments of powers are most usually made & principles are least watched. That whether the coincidence of the occasion & the encroachment in the present case has been from accident or design, the right of the commonwealth to the government of itself in cases not [illegible] parted with,~~

is too vitally important to be yielded from temporary or secondary considerations: that a fixed determination therefore to retain it, requires us in candor and without reserve to declare & to warn our co-states that considering the said acts to be 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 is to proceed in the exercise over these states of any & all powers whatever, considering this as seizing the rights of the states & consolidating them in the hands of the general government, with power to bind the states (not merely in the cases made federal casus federis but) in all cases whatsoever by laws not made with their consent, but by other states against their consent; considering all the consequences as nothing in comparison with that of yielding the form of government we have chosen & of living under one [struck out] deriving it's powers by from it's own will and not from our authority, this commonwealth, as an integral party, does in that case protest against such opinions and exercises of undelegated & unauthorised power, and does declare that recurring to it's natural right of judging & acting for itself, it will be constrained to take care of itself, & to provide by measures of it's own that no power not plainly & intentionally delegated by the constitution to the general government, shall be exercised within the territory-of-this-commonwealth. that they will concur with this comm. in considering the said acts so palpably against the const. as to amount to an undisguised declarn. that that compact is not meant to be the measure of the powers of the genl. govmt., but that it will proceed in the exercise over these states of all powers whatsoever, that they will view this as seizing the right of the states & consolidating them in the hands of the genl. govt. with power assumed to bind the states.¹

¹Ford, Writings of Thomas Jefferson, VII, 289-307. Two copies of these resolutions are preserved among the manuscripts of Thomas Jefferson, both in his own handwriting. One is the rough draft reproduced above. The second is reproduced as Appendix B, and is revised and carefully prepared. These are probably the originals of the Kentucky Resolutions of 1798.

APPENDIX B

JEFFERSON'S FINAL DRAFT

1. Resolved, that the several States composing the United States of America, are not united on the principle of unlimited submission to their general government; but that, by a compact under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a general government for special purposes,-- delegated to that government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force: that to this compact each State acceded as a State, and is an integral party, 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 offences against the law of nations, and no other crimes whatsoever; 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 the act of Congress, passed on the 14th day 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, 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 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 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 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 process 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 against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence," 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 hearing witnesses in his favor, without defence, 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 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, imposts, and 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 in any department or officer thereof," goes to the destruction of all limits prescribed to their power 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.

8. 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 had 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 the 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, (*casus non foederis*), [sic] 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 suspensions 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 rampart 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 has assented to, and accepted over the friendly strangers to whom the mild spirit of our country and its laws

have pledged hospitality and protection: that the men of our choice have more respected the bare suspensions 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 power, 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, whether 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 in 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.²

²Ibid., VII, 289-307.

APPENDIX C

KENTUCKY RESOLUTIONS OF 1798

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, 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 measures of its powers; but that as in all other 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 opinions and exercises, and retained to themselves the right or 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 violates either, throws down the sanctuary which covers the others, and that libels, falsehoods, 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 day of July 1798, entitled "An act in addition to the 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 effect.

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 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 22nd 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 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.

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 to 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 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 favour, and to have the assistance of counsel for his defence," 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 having witnesses in his favour, 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 Courts, the Judges of which shall hold their offices during good behaviour," 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 evinced 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, imposts, and 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 construed as themselves to give unlimited powers, nor a part so to be taken, as to destroy the whole residue of the instrument: That the proceedings of the General Government under colour of these 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 hereby enjoined to present the same to their respective Houses, and to use their best endeavours 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 specified National purposes, and particularly for those specified in their last 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, tamely to submit to undelegated & 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 crimes & 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 suspensions 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 rampart now remains against the passions and the power of a majority of Congress, to protect from a like exportation or other more grievous punishment the minority of the same body, the legislatures, judges, Governors, & Counsellors of the states, nor their other peaceable inhabitants who may venture to reclaim the constitutional rights & liberties of the states & 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 elections 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 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 with 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 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 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 & substance of law and justice. In questions of power then let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution. 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, whether general or particular, and that the rights

and liberties of their Co-states will be exposed to no dangers by remaining embarked on a common bottom with their own: That they will concur with this Commonwealth in considering the said acts as to 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 consent, but by others against their consent: That this would be to surrender the form of Government we have chosen, and to 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 unite with this Commonwealth in requesting their repeal at the next session of Congress.³

³Kentucky, House of Representatives, "Resolutions passed November 10, 1798," (Evans #33952). The Resolutions passed the Senate on November 13, 1798, and were signed into law by Governor James Garrard on November 16, 1798.

BIBLIOGRAPHY

Primary Sources

Public Documents

Connecticut, General Court, Acts and Laws, October Session, Hartford, Hudson and Goodwin, (Evans #35342).

Delaware, House of Representatives, Journal of the House of Representatives, January Session, 1799, Newcastle, Samuel and John Adams, (Evans #35393).

_____, Senate, Journal of the Senate, January Session, 1799, Newcastle, Samuel and John Adams, (Evans #35395).

Georgia, General Assembly, Acts of the General Assembly, 1799, Louisville, Elisha H. Waldo, (Evans #35540-35541).

_____, House of Representatives, Journal of the House of Representatives, November Session, 1799, Augusta, John Smith, (Evans #37507).

Kentucky, House of Representatives, "Resolutions passed November 10, 1798," (Evans #33952).

Maryland, House of Delegates, Journal of the Votes and Proceedings of the House of Delegates, November Session, 1798, Annapolis (Evans #35779).

Massachusetts, General Court, Acts and Laws, January Session, 1799, Boston, Young and Minns, (Evans #35786).

_____, General Court, "A Resolution to restrict holders of federal offices to native-born citizens," June 28, 1798, Boston, Young and Minns, (Evans #34066).

_____, General Court, Resolves of the General Court, January Session, 1799, Boston, Young and Minns, (Evans #35796).

_____, Senate, "Report on the Virginia Resolutions," Boston, Young and Minns, (Evans #35795).

New Hampshire, House of Representatives, A Journal of the Proceedings of the Hon. House of Representatives, June Session, 1799, Portsmouth, John Melcher, (Evans #35879).

- _____, Senate, A Journal of the Proceedings of the Honorable Senate, June Session, 1799, Portsmouth, John Melcher, (Evans #35882).
- New Jersey, Legislative-Council, Journal of the Proceedings of the Legislative-Council, Twenty-third Session, 1799, Trenton, Matthias Day, (Evans #35898).
- _____, General Assembly, Votes and Proceedings of the Twenty-third General Assembly of the State of New Jersey, Second Sitting, January, 1799, Trenton, Sherman, Mershon and Thomas, for Matthias Day, (Evans #35902).
- New York, General Assembly, Journal of the Assembly of the State of New York, Twenty-second Session, January, 1799, Albany, Loring Andrews, (Evans #35924).
- _____, Senate, Journal of the Senate, Twenty-second Session, January, 1799, Albany, Loring Andrews, (Evans #35925).
- North Carolina, House of Commons, Journal of the House of Commons, November Session, 1798, Wilmington, A. Hall, (Evans #34244).
- _____, Senate, Journal of the Senate, November Session, 1798, Wilmington, A. Hall, (Evans #34245).
- Pennsylvania, House of Representatives, Journal of the First Session of the Ninth House of Representatives of the Commonwealth of Pennsylvania, January, 1799, Philadelphia, Hall and Sellers, (Evans #36062).
- _____, Senate, Journal of the Senate of the Commonwealth of Pennsylvania, Ninth Senate, First Session, January, 1799, Philadelphia, Zachariah Poulbok, (Evans #36063).
- Rhode Island, General Assembly, Resolutions of the General Assembly, 1799, Newport, Oliver Farnsworth, (Evans #36217).
- South Carolina, General Assembly, Acts and Resolutions of the General Assembly, 1799, Charleston, Young and Faust, (Evans #36336).
- Tennessee, General Assembly, Acts Passed at the Second Session of the Second General Assembly of the State of Tennessee, 1799, Knoxville, Roulstone and Parrington, (Evans #36402-36403).
- U. S., American State Papers, Miscellaneous, Vol. XXXVII, Document Number 110, Fifth Congress, Third Session, Washington, Gales and Seaton, 1834, 181-184.

_____, Annals of Congress, Volume X, Fifth Congress, Washington, Gales and Seaton, 1834.

_____, President, Message of the President of the United States, March 5, 1798, Philadelphia, Way and Groff, by order of Congress (Evans #34809).

_____, President, Message Concerning the Dispatches from the Envoys Extraordinary of the United States to the French Republic, March 19, 1798, Philadelphia, by order of Congress, (Evans #34810).

_____, President, Message of the President of the United States to Both Houses of Congress, April 3, 1798, Philadelphia, by order of Congress, (Evans #34812).

_____, The Public Statutes at Large, edited by Richard Peters, Volume I, Fifth Congress, Boston, Little, Brown and Company, 1861.

Vermont, General Assembly, Acts and Laws Passed by the Legislature, October Session, 1799, Bennington, Anthony Haswell, (Evans #36613-36614).

_____, General Assembly, Journal of the General Assembly, October Session, 1799, Bennington, (Evans #36615).

Memoirs and Collected Works

Adams, Charles Francis, editor, The Works of John Adams (10 vols.), Boston, Little, Brown and Company, 1853-1856.

Fitzpatrick, John C., editor, The Writings of George Washington (37 vols.), Washington, United States Government Printing Office, 1940.

Ford, Paul Leicester, editor, The Writings of Thomas Jefferson (10 vols.), New York, G. P. Putnam's Sons, 1892-1899.

Ford, Worthington C., editor, The Writings of John Quincy Adams (7 vols.), New York, The Macmillan Company, 1913-1917.

Hamilton, John C., editor, The Writings of Alexander Hamilton (7 vols.), New York, Charles S. Francis and Company, 1850-1851.

Hunt, Gaillard, editor, The Writings of James Madison (9 vols.), New York, G. P. Putnam's Sons, 1904-1906.

Johnston, Henry P., editor, The Correspondence and Public Papers of John Jay (4 vols.), New York, G. P. Putnam's Sons, 1891-1893.

Lipscomb, Andrew A. and Bergh, Albert E., editors, The Writings of Thomas Jefferson (20 vols.), Washington, The Thomas Jefferson Memorial Association, 1903-1904.

Randolph, Thomas Jefferson, editor, The Writings of Thomas Jefferson (4 vols.), Charlottesville, 1829.

Richardson, James D., editor, A Compilation of the Messages and Papers of the Presidents, 1789-1902 (10 vols.), Washington, Bureau of National Literature and Art, 1896-1904.

Contemporary Newspapers

Albany Centinel, January 1, 1799 (Evans #35089).

American Mercury (Hartford), January 1, 1799 (Evans #36004).

Aurora and General Advertiser (Philadelphia), 1798-1799.

Centinel of Freedom (Newark), January 1, 1799 (Evans #35961).

City Gazette and Commercial Daily Advertiser (Charleston), 1799.

Columbian Mirror and Alexandria Gazette, 1798-1799.

Commercial Advertiser (New York), 1798-1799.

Connecticut Courant (Hartford), 1798-1799.

Gazette of the United States and Philadelphia Daily Advertiser, 1798-1799.

Green Mountain Patriot (Peacham, Vermont), 1798-1799.

Kentucky Gazette (Lexington), 1798-1799.

Newburyport Herald and Country Gazette (Newburyport, Massachusetts), 1798-1799.

New Jersey Journal (Elizabeth Town), 1798-1799.

Palladium (Frankfort, Kentucky), 1798-1799.

Philadelphia Gazette and Universal Daily Advertiser, 1798-1799.

State Gazette of North Carolina (Edenton), 1799.

Virginia Argus (Richmond), 1798-1799.

Virginia Gazette and General Advertiser, (Richmond), 1798-1799.

Contemporary Journals and Magazines

Monthly Magazine and American Review (New York), I (1799).

National Magazine (Richmond), I (June 1, 1799).

Philadelphia Magazine and Review, I (January, 1799).

Republican Magazine: or Repository of Political Truths
(Fairhaven, Vermont), 1799.

Contemporary Speeches and Sermons

Eaton, Peter, "Sermon Preached at Boxford, November 28, 1799,"
Haverhill, Massachusetts, Moore and Stebbins, 1799,
(Evans #35433).

Edmond, David, "An Oration Delivered at Ridgefield on the
Fourth of July, 1799," Danbury, Connecticut, Douglas and
Nichols, 1799, (Evans #35435).

Fisher, Jacob, "An Oration Pronounced at Kennebunk on the
Fourth Day of July, 1799," Portland, Maine, E. A. Jenks,
1799, (Evans #35483).

Fiske, Abel, "Discourse Delivered at Wilton, November 15, 1798,"
Amherst, New Hampshire, Samuel Preston, 1799, (Evans #35434).

Fiske, Samuel, "Oration Pronounced at Claremont on the Anniversary
of American Independence," Windsor, Vermont, Alden Spooner,
1799, (Evans #35485).

Fraser, Donald, "Party-Spirit Exposed, or Remarks on the Times,"
New York, Thomas Kirk, 1799, (Evans #35501).

Hobby, William T., "An Oration Delivered in St. Paul's Church,
Augusta, on the Fourth of July," Augusta, Georgia,
Randolph and Bunce, 1799 (Evans #35625).

Hubbard, John, "An Oration Pronounced at Walpole on the
Anniversary of American Independence, July 4, 1799,"
Walpole, New Hampshire, David Carlisle for Thomas and
Thomas, 1799, (Evans #35645).

M'Donald, John, "An Address Delivered at Cooperstown, New York,
April 25, 1799," Cooperstown, Elnu Phinney, (Evans #35756).

Parish, Elijah, "An Oration Delivered at Byfield," Newburyport, Massachusetts, Angier March, 1799, (Evans #36037).

Stoddard, Amos, "An Oration Delivered before the Citizens of Portland, and the Supreme Judicial Court of the Commonwealth of Massachusetts," Portland, E. A. Jenks, 1799, (Evans #36370).

Secondary Sources

Biographies

Adams, Henry, Life of Albert Gallatin, Philadelphia, J. B. Lippincott and Company, 1879.

Brant, Irving, James Madison (6 vols.), Indianapolis and New York, Bobbs-Merrill, 1950, III.

Chinard, Gilbert, Thomas Jefferson: The Apostle of Americanism, Boston, Little, Brown and Company, 1929.

Jay, William, The Life of John Jay (2 vols.), New York, J. and J. Harper, 1833, II.

Malone, Dumas, Jefferson and the Ordeal of Liberty (Vol. III of Jefferson and His Time), Boston, Little, Brown and Company, 1962.

Miller, John C., Alexander Hamilton: Portrait in Paradox, New York, Harper and Brothers, 1959.

Robinson, Blackwell P., William R. Davie, Chapel Hill, University of North Carolina Press, 1957.

Schachner, Nathan, Thomas Jefferson: A Biography (2 vols.), New York, Appleton-Century-Crofts, Inc., 1951, II.

Smith, Page, John Adams (2 vols.), Garden City, New Jersey, Doubleday and Company, 1962, II.

Turner, Lynn W., William Plumer of New Hampshire, Chapel Hill, University of North Carolina Press, 1962.

Wiltse, Charles M., John C. Calhoun: Nullifier, 1829-1839 (Vol. II of John C. Calhoun), New York and Indianapolis, Bobbs-Merrill, Inc., 1949.

Monographs

- Bancroft, Frederic, Calhoun and the South Carolina Nullification Movement, Baltimore, Johns Hopkins Press, 1928.
- Bowers, Claude C., Jefferson and Hamilton, New York, Houghton Mifflin Company, 1925.
- Clark, Thomas D., A History of Kentucky, New York, Prentice-Hall, Inc., 1937.
- Koch, Adrienne, Jefferson and Madison, New York, Alfred A. Knopf, 1950.
- Mann, Butler, A History of the Commonwealth of Kentucky, Louisville, Deckerman and Company, 1834.
- McElroy, Robert McNutt, Kentucky in the Nation's History, New York, Moffat, Yard and Company, 1909.
- Miller, John C., Crisis in Freedom: The Alien and Sedition Acts, Boston, Little, Brown and Company, 1951.
- _____, The Federalist Era, New American Nation Series, New York, Harper and Row, 1960.
- Powell, Edward P., Nullification and Secession in the United States, New York, G. P. Putnam's Sons, 1898.
- Taylor, John, An Inquiry Into the Principles and Policy of the Government of the United States, Fredricksburg, Virginia, Cady and Green, 1814, (Sabin #94491).

Articles

- Anderson, Frank Malloy, "Contemporary Opinion of the Virginia and Kentucky Resolutions," American Historical Review, V (October, 1899 and January, 1900), 45-63, 225-252.
- Channing, Edward, "Kentucky Resolutions of 1798," American Historical Review, XX (January, 1915), 333-336.
- Everett, Edward, "The Debate in the Senate of the United States," North American Review, XXXI (October, 1830), 462-546.
- Ketcham, Ralph L., "Jefferson and Madison and the Doctrines of Interposition and Nullification," Virginia Magazine of History and Biography, LXVI (April, 1958), 178-182.
- Koch, Adrienne and Ammon, Harry, "The Virginia and Kentucky Resolutions: An Episode in Jefferson's and Madison's

Randolph, Sarah Nicholas, "The Kentucky Resolutions in a New Light," The Nation, XLIV (May 5, 1887), 382-384.

Smith, James Morton, "The Federalist 'Saints' Versus 'The Devil of Sedition : The Liberty Pole Cases of Dedham, Massachusetts, 1798-1799,'" New England Quarterly, XXVIII (June, 1955), 198-215.

Warfield, Ethelbert Dudley, "The New Light on the Kentucky Resolutions," The Nation, XLIV (June 2, 1887), 467-468.

Unpublished Materials

Black, Robert Duane, "The Democratic-Republicans: A Study in States' Rights Ideology," unpublished master's thesis, Department of History, North Texas State University, Denton, Texas, 1957.

Bridges, David L., "A Historiographical Study of Thomas Jefferson," unpublished master's thesis, Department of History, North Texas State University, Denton, Texas, 1958.

McAdams, Lee Etta, "The Influence of Alexander Hamilton Upon the Administration of John Adams," unpublished master's thesis, Department of History, North Texas State University, Denton, Texas, 1952.