

# The Virginia Resolutions

(21 Dec 1798 by James Madison)

## EDITORIAL NOTE

James Madison's (JM) writing of the Virginia Resolutions should be seen in the light of a long series of actions JM undertook to stop the progress of what he considered to be the wrongful interpretation of the Constitution he had done so much to create and have adopted. In JM's mind, the abuse of the "necessary and proper" clause in the Constitution had led to the expansion of federal government power well beyond the intended execution of the enumerated powers. The creation of the public debt and the Bank of the United States, the carriage tax, the Jay treaty, and finally the string of measures adopted by the Adams administration in the second session of the Fifth Congress all indicated a dramatic perversion of the original intentions of the framers of the Constitution. In addition, the consequence of being on the losing side of bruising political battles for nearly a decade had sensitized JM to the quandary of the minority in majoritarian politics. Ironically, JM's concern had changed from how to give energy to the federal government to how to control its powers in order to safeguard the rights of both the states and individuals.

Although he had been less immediately concerned with these questions since his resignation from Congress and subsequent retirement to Montpelier in March 1797, JM, through his correspondence with Jefferson, John Dawson, and Henry Tazewell, was never far from the pulse of national politics. His own letters are replete with commentary on the follies of Federalism as reported by his friends, and he privately supported Jefferson's efforts to combat the most glaring abuses by arousing public opinion in their home state through petitions to the Virginia General Assembly (see "Petition to Virginia House of Delegates" [on Cabell's presentment], Aug. 1797, *Ford, Writings of Jefferson*, 7:158–64; and "To the General Assembly," *enclosure in Jefferson to JM*, 26 Oct. 1798).

The Alien and Sedition Acts were, however, sufficient to prod JM into a higher level of political activity. His initial response to the draft alien bill prepared by the Senate in the second session of the Fifth Congress was that it was a "monster that must for ever disgrace its parents," and he expressed disbelief that such a bill could ever have been proposed. He still trusted, however, that the Federalists' enforcement of their heavy-handed policies would eventually provoke the public into opposing them openly. "These addresses to the feelings of the people from their enemies," he wrote to Jefferson in May 1798 about the latest measures of the federal government, "may have more effect in opening their eyes, than all the arguments addressed to their understandings by their friends" (*JM to Jefferson*, 20 May 1798).

Just when JM became convinced that it was in the Republican interest to prepare a public argument denouncing Federalist policies is not known. Jefferson had been urging JM to take up his pen for some time, and it is more than likely that he did so again when he visited Montpelier on 3 July on his way home from Philadelphia. It is probable, though, that if the two agreed on a plan of action at this time, they also decided to maintain silence unless they were assured of an absolutely safe conduit for their letters. In any event, the absence of a written record suggests that a complete silence was kept for the remainder of the summer and early fall until JM visited Monticello in October. There, it would seem, Jefferson showed JM the nine resolutions he had drafted that were ultimately to be adopted by the state legislature of Kentucky. Jefferson promised to send a copy of the resolutions to Montpelier, which he did by a letter dated 17 November, insisting to JM that "we should distinctly affirm all the important principles they contain, so as to hold to that ground in future" (*Jefferson to JM*, 17 Nov. 1798).

Jefferson's resolutions, which were considerably moderated in the process of adoption by the Kentucky legislature, were too strongly worded for JM. Jefferson passionately indicted the Adams administration's measures in unequivocal language, pointing out the remedy for acts that infringed the Constitution: **Nullification** of such laws by each state acting alone. And in the longest of his resolutions Jefferson avowed that acts like the Alien and Sedition Laws would "drive these states into revolution & blood." There could be no

mistaking his meaning, and JM, as it proved, was to be reluctant to follow his friend's example in this respect (draft of Kentucky Resolutions enclosed in [Jefferson to JM, 17 Nov. 1798](#)).

[In the latter half of November, JM prepared a shorter and more carefully crafted declaration of protest against the unconstitutionality of certain acts of the federal government as well as against certain tendencies to interpret the Constitution so as to enlarge its powers at the expense of the states.](#) JM distilled Jefferson's essential points into [a cooler statement](#) that began by unequivocally expressing support for the Constitution and the "Union of the States." Moreover, in contrast to Jefferson's challenge to the legitimacy of the administration, JM chose to align himself with the Union's supporters by [claiming that it was their common duty to protest "every infraction of those principles, which constitute the only basis of that union."](#) Along with Jefferson, JM viewed the Union as a compact between states, he regretted the enlargement of the powers of the federal government by a loose construction of the Constitution, and he deplored the passage of the Alien and Sedition Acts as "palpable and alarming infractions of the constitution." [Here, though, JM departed from Jefferson's opinion that such acts were "void & of no force."](#) While he insisted that the acts were "unconstitutional," JM was purposely vague about the recourse left open to a state in protesting such acts. [The states, he wrote, were "duty bound, to interpose for arresting the progress of the evil,"](#) and he hoped that the other states in conjunction with Virginia would take all "the necessary and proper measures" to combat them. By specifically attacking the administration upon the narrowest and most vulnerable ground of the Alien and Sedition Acts, and by leaving the widest possible range of action for the states to take, [JM sought to reach sympathizers in every state, provide them with a platform from which to attack the measures of the government, and thus leave to them the problem of the form their responses should take](#) ([JM to Jefferson, 29 Dec. 1798](#)).

After drafting the resolutions, JM gave them to Wilson Cary Nicholas, a close Republican associate from Albemarle County, for introduction into the Virginia General Assembly session that began on 3 December 1798. [Nicholas, in the meantime, showed the paper to Jefferson, who wrote him on 29 November that the resolutions should be stiffened](#) by stating that the Alien and Sedition Acts were [not only unconstitutional but were "not law, but utterly null, void and of no force or effect."](#) [Nicholas added the phrase, and it was in this form that the resolutions were introduced on 10 December by John Taylor of Caroline.](#) And it was in this form too that the resolutions were first published and disseminated throughout the United States ([Jefferson to Nicholas, 29 Nov. 1798, Ford, Writings of Jefferson, 7:312–13; Debates in the House of Delegates of Virginia upon Certain Resolutions before the House, upon the Important Subject of the Acts of Congress Passed at Their Last Session, Commonly Called the Alien and Sedition Laws \[Richmond, 1798; Evans 34935\], pp. 148–50; broadside of Virginia Resolutions \[ViHi\]](#)).

Since JM had been so careful to restrain the tone and language of his version of the "important principles" that Jefferson's resolutions contained, it is not altogether surprising that in the course of the debate over their adoption in the House of Delegates, [Jefferson's phrase was cut from the document as passed.](#) [It is possible that JM, who was visiting in Hanover County in the vicinity of Richmond at the time, heard of the addition and demanded the change.](#) Or he got word of the change from a participant in the Republican caucus that met before the session's opening to discuss strategy for the smooth adoption of the resolutions. It is more likely, however, that in the course of the long debate on the resolutions, which took place from 13 to 21 December, John Taylor of Caroline cut the phrase in deference to what he might have understood as Jefferson's original wish for a more moderate stance. In any event, JM's version won out ([Debates in the House of Delegates upon Certain Resolutions, pp. 24–158; JM to Monroe, 11 Dec. 1798; Richmond Whig, 4 July 1842; Jefferson to John Taylor, 26 Nov. 1798, Ford, Writings of Jefferson, 7:311](#)).

The resolutions were adopted by the House of Delegates, as JM had written them, on 21 December by a vote of 100 to 63. The Senate followed suit after little debate on 24 December by a vote of 14 to 3. Copies were then sent to the governor of each state. In the interim Virginia Republicans had sent the resolutions as introduced to the nation's capital where they were printed in the Philadelphia *Aurora General Advertiser* on 22 December. Notice of the passage of the resolutions was published in the same paper on 4 January 1799; and the resolutions as finally passed were printed in the Philadelphia *Gazette of the United States* four days later. The action of the

Virginia General Assembly buoyed the morale of congressional Republicans like Albert Gallatin who were readying themselves for an attempt to overturn the Alien and Sedition Acts, but JM's role as the draftsman of the General Assembly resolutions was neither generally known nor acknowledged at the time. The Virginia Resolutions, in fact, were often referred to as Taylor's Resolutions until their legislative sponsor revealed JM as their true author in a dispute with Richmond editor Thomas Ritchie in 1809 (*JHDV*, Dec. 1798 [Evans 36642], pp. 31–33; Gallatin to Hannah N. Gallatin, 21 Dec. 1798, *Papers of Gallatin* [microfilm ed.], reel 4; Richmond *Enquirer*, 14 Mar. 1809).

Whatever political benefits JM had anticipated from casting his arguments in temperate and conciliatory language were lost by the coupling of his resolutions with those adopted in Kentucky. Seven states replied to the overtures of Virginia and Kentucky, and their reaction was uniformly unfavorable. JM's protest against the Alien and Sedition Acts was thus drowned in the uproar over the threat to the Union presented by Jefferson's espousal of the idea of state autonomy. The hostile replies of these states further muddied the issue, so much so that JM felt obliged to enter the next session of the Virginia General Assembly and there to write a detailed, point-by-point defense of his resolutions ("Answers of the Several State Legislatures," *Niles' Weekly Register*, 43 [1832–33]: supplement, pp. 2–5; *The Report of 1800*, 7 Jan. 1800, Editorial Note).

(Secondary sources used for this note: Koch and Ammon, "The Virginia and Kentucky Resolutions," *WMQ*, 3d ser., 5 [1948]: 145–76; Brant, *Madison*, 3:459–64; Ketcham, *James Madison*, pp. 394–97; Malone, *Jefferson and His Time*, 3:399–409.)

# In the House of Delegates

Friday Decr. 21st. 1798.

RESOLVED, that the General Assembly of Virginia doth unequivocally express a firm resolution to maintain and defend the constitution of the United States, and the Constitution of this state, against every aggression, either foreign or domestic, and that they will support the government of the United States in all measures, warranted by the former.

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

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

That the General Assembly doth also express its deep regret that a spirit has in sundry instances, been manifested by the federal government, to enlarge its powers by forced constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases (which having been copied from the very limited grant of powers in the former articles of confederation were the less liable to be misconstrued) so as to destroy the meaning and effect of the particular enumeration, which necessarily explains and limits the general phrases; and so as to consolidate the states by degrees into one sovereignty, the obvious tendency and inevitable consequence of which would be, to transform the present republican system of the United States, into an absolute, or at best a mixed monarchy.

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

That this State having by its convention which ratified the federal constitution, expressly declared, “that among other essential rights, the liberty of conscience and of the press cannot be cancelled, abridged, restrained or modified by any authority of the United States” and from its extreme anxiety to guard these rights from every possible attack of sophistry or ambition, having with other states recommended an amendment for that purpose, which amendment was in due time annexed to the Constitution, it would mark a reproachful inconsistency and criminal degeneracy, if an indifference were now shewn to the most palpable violation of one of the rights thus declared and secured, and to the establishment of a precedent which may be fatal to the other.

That the good people of this Commonwealth having ever felt and continuing to feel the most sincere affection for their bretheren of the other states, the truest anxiety for establishing and perpetuating the union of all, and the most scrupulous fidelity to that Constitution which is the pledge of mutual friendship, and the instrument of mutual happiness, the General Assembly doth solemnly appeal to the like dispositions of the other States, in confidence that they will concur with this Commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional,<sup>2</sup> and that the necessary and proper measures will be taken by each, for cooperating with this State in maintaining unimpaired the authorities, rights, and liberties, reserved to the States respectively, or to the people.

That the Governor be desired to transmit a copy of the foregoing resolutions to the Executive authority of each of the other States, with a request, that the same may be communicated to the Legislature thereof.

And that a copy be furnished to each of the Senators and Representatives, representing this State in the Congress of the United States.

<http://founders.archives.gov/documents/Madison/01-17-02-0128>