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THE VIRGINIA RESOLUTIONS OF 1798:
A STUDY OF THE CONTEMPORARY DEBATE

Alice Justice Retzer
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The Virginia Resolutions of 1798 have been praised as a defense of the basic freedoms of person, speech, and press and equally denounced as an early precedent for the principles of states rights, nullification and interposition. Involved in the crisis which arose over the Alien and Sedition Laws were such outstanding Virginians and national figures as Thomas Jefferson, James Madison, John Taylor, William Branch Giles, John Marshall, Patrick Henry, and Henry Lee. Without major emphasis upon the contributions or activities of these statesmen or the historical implications of the Resolutions, the purpose of this paper is to examine the contemporary situation, more specifically the enactment of the Resolutions by the Republican majority and the Federalist reaction to the document.

A significant precedent to the action taken by the Virginia Legislature in 1798, was their official protest the previous year in the case of Samuel Jordan Cabell. A Republican representative in the United States Congress, Cabell was the object of a presentment in the Federal circuit court for the district of Virginia held at Richmond on May 22, 1797. The grand jury declared Cabell's circular letters to his constituents attacking the Adams Administration to be a "real evil" on the grounds that they were intended, during a period of national unrest and public danger, "to disseminate unfounded calumnies against the happy government of the United States, and thereby to separate the people therefrom, and to increase or produce a foreign influence, ruinous of the peace, happiness, and independence of these United States." ¹

Although Cabell was never brought to trial for his writings, the presentment of the court evoked a vigorous public debate that went beyond a judgment
of the prudence of Cabell's correspondence, to embrace broader questions of
the jurisdiction of Federal courts, the rights of juries, the extent of free-
dom of political expression, and the nature of republican government. Two
presentment
days after the was pronounced, the Virginia Gazette and General Advertiser
published the charge which had been delivered to the grand jury immediately
prior to the declaration in the Cabell case by James Iredell, Associate Jus-
tice of the United States Supreme Court. The emphasis of his speech was upon
submission of the minority to the will of the majority as the basis of repub-
lican government where the majority had been invested with the authority of
the decision-making process. Iredell asserted that it was the responsibility
of any person who disapproved of governmental action to restrain from attack-
ing the policy as dishonest, and submit with respect to the law, considering
the real possibility that his own opinion might be erroneous. The commission
of the judiciary within a democratic system in which voluntary support or
cheerful obedience to government by all the citizens could not be expected,
was to preserve the union lest some foreign nation take advantage of internal
discord to the ruin of national independence.2

The defenders of Cabell and the cause of freedom of expression by the
political minority did not hesitate to connect the essence of Iredell's
charge with the result of the court proceedings, and concluded that his
message was motivated by the malice of Federalist partisanship. Under the
pseudonym "Scaevola," an open letter was written to Iredell in the Gazette
accusing the Judge of purposely delivering an inflammatory address which
would move the jury to effect the presentment. Scaevola maintained that the
result of Iredell's charge represented "...an overt act of treason against
the good senses of Virginia."3 In attempting to serve as a "political ther-
mometer" for the use of Virginians in determining the degree of free discus-
sion which should be permitted, Iredell had exceeded the powers delegated in the Constitution to the judicial branch of the government. The idea that judges should be confined to offenses against existing laws rather than approving or assailing party principles was set forth by Scaevola and became the foundation of the Republican argument in Cabell's defense. The letter closed with a bitter condemnation of both Judge Iredell and the jury who, in censuring the usurpation of power by a representative of the people, were guilty of an even greater assumption of power in violation of the duties of the judiciary.

The conservative reaction against the Republican attack on the court noticeably commenced after the publication of a letter from Samuel Cabell addressed "To the Citizens of Virginia" which appeared in the Gazette on June 14, 1797. Cabell acknowledged the function and value of the nation's judicial institutions only to the extent that they preserved public peace and individual rights by execution of the law. Where no law was violated, there were no grounds for court presentment or prosecution, and no law made it culpable to express freely one's religious or political opinions. By failing to state the facts which he was accused of misrepresenting, the jury had vented opinion against opinion to no conclusive proof that he had written falsehoods intended to deceive his constituents. Cabell reasserted his love for the country and support for the government, but once again rededicated himself to the role of a watchful sentinel, assuring his fellow citizens that he would continue to pursue the same means of informing them which had incurred censure.

The response to Cabell's letter centered not so much in support of the original court presentment against him, but in opposition to Cabell's interpretation of the legal rights of the judiciary. In a series of letters to
the Editor of the Gazette signed "Jugurtha," a citizen admitted never having read Cabell's correspondence, but upheld the right of juries to present offenses which they could not legally punish. The fact that a presentment was merely an accusation, and that the task of ascertaining the truth of such an accusation was the duty of a second tribunal, was noted by the author. Liberty of the press must be exercised with discretion so as not to injure any individual or the public. If this liberty were abused, it became both the right and the duty of grand juries to protect the community from inflammatory and immoral writings. Jugurtha applied an unusual version of the Golden Rule to Cabell's public reaction to his presentment. "But as you sought approbation on the principle of doing right, it ill becomes you to take offense at the disapprobation of those who conceive that you have done wrong." It was just as great a duty for the jurors to check the dangerous tendency which they believed would be the result of Cabell's effort to inform his constituents against erroneous policy in the government, as it was his compulsion to incite the original prejudice. In reference to the question of the extent of free speech, Jugurtha drew attention to the distinction between private and public opinions. Opinions must and would always be free; no one had the right or power to determine the thoughts of a man's mind. When opinions were converted into public property, however, the public had the option of accepting or discarding them. As an instrument for public safety, the court possessed the authority to interpose its disapproval on what had been written for public consumption.

The questions of legality raised by Jugurtha were carried to a further extreme in several other addresses to Cabell. "A Friend to Juries" assured the Representative that he was a great admirer of his devotion to liberty and never doubted his worthy intentions, but regretted the means adopted by
Cabell in fighting for freedom of opinion. By attacking the jury composed of representatives of the people, the author claimed Cabell had made a direct affront on the freedom of the people to express their opinions collectively. Neither the freedom of individual thought nor independence of representative expression could be more worthy of preservation than the judiciary, upon whose independence and protection all other individual rights depended. From the pen of a retired veteran in a Bedford County rest home came perhaps the most bitter denunciation of Cabell as a traitor to his country. Calohill Mennie observed that it was from just such outspoken people as Cabell that the French obtained their false impression of American citizens being in opposition to their government. Instead of taking the opportunity to unite the people in defense of liberty, Cabell's writings had exerted the opposite effect of alienating the citizenry from their beloved President and destroying the government in their eyes. The letters of Cabell, in the opinion of Mennie, bordered on no less than "the incoherent ravings of a madman."

The Republican support for Cabell materialized in the form of a petition from Amherst, Albemarle, Fluvanna, and Goochland Counties which was introduced in the Virginia Legislature during the session commencing December 4, 1797. Appealing to common law, the petition asserted that in a system of government where the people are subject to laws consented to by their representatives, these representatives should be free from coercion of the co-ordinate judicial and executive branches. Samuel Jordan Cabell had been elected by the said counties in March 1795 and 1797, as their member in the House of Representatives and had performed dutifully. The presentment was delivered against Cabell while he was exercising the right of communication with his constituents, and thus violated a principle of representative government which had never been questioned even by the royal judges and pre-revolutionary
governors. The conclusion of the petitioners was that the act of the court subordinated the branch most directly responsible to the people, the legislature, to the judiciary and thereby undermined the natural right of the people to influence the proceedings of government. The General Assembly was invoked to redress the abridgement of this right.

The petition was referred to a Committee of the Whole which reported after two days of deliberation the opinion of the House of Delegates that the Commonwealth of Virginia ought to vindicate the cause of republican government. On December 28, the House presented its resolutions. First, the Legislature resolved that it was their right to oppose political error that might endanger the safety of the state or diminish the rights of individuals. The presentment referred to in the petition was denounced for subjecting a representative to censure for communication with his constituents. It was further resolved that the fruit of the precedent rooted in the action of the court would be the following: ignorance of the voting public, transfer of responsibility from constituents to juries, dependence of the legislative upon the judicial and executive branches, and abolition of free intercourse between citizens. The final resolution recognized Congress, not the state legislatures, as the proper body to serve as judge and guardian of the rights and privileges of its members. The Virginia Senators to the United States Congress were instructed to request a law outlining the duties of grand juries and confining them to presentments of offenses against positive laws. The resolutions passed affirmatively in the House of Delegates as reported with a vote of 92-53.13

The publication in the spring of 1798 of the XYZ correspondence heightened already critical relations with France and produced a flood of American nationalism that greatly strengthened the Federalist party. Communications
between the United States and the tri-colored Republic were temporarily suspended, and many Americans were led to believe that war was imminent.  

From March 27 to July 16, 1798, Congress passed approximately twenty acts of national defense in preparation for this unofficial war. These included the establishment of a naval department, suspension of commerce with France, increase in taxes, and the enlargement of the army and navy.

By far the most significant and controversial defense measures to grow out of contemporary foreign affairs and internal political considerations were the four bills passed in June and July and collectively termed the Alien and Sedition Laws. The Naturalization Act of June 18, 1798, extended the length of residency required for citizenship from five to fourteen years.

Enacted the following week, the Alien Bill invested in the President of the United States for a period of two years the power to arrest and deport "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..." The only act designed specifically for a situation of declared hostility was the Alien Enemies Bill of July 5, 1798, which authorized the President to apprehend and remove all natives or subjects of the hostile nation over fourteen years of age and not a naturalized citizen of the United States.

The last and most encompassing of these laws was the Sedition Act of July 14, 1798. This legislation made any person conspiring, threatening, counseling, advising, or attempting opposition to the measures of the government guilty of a high misdemeanor punishable by fine and imprisonment. The writing, publication, or utterance of any falsehoods against the government, Congress, or the President of the United States with the intent of defaming the government or exciting hatred in the people and stirring up revolt,
were also made culpable. Any person prosecuted under this act, which would remain in force until March 3, 1801, would be brought to trial and afforded the opportunity to present his defense with the end of proving the truth of the matter in question. The jury was given the right to determine the law and fact of the case.17

Nowhere in the nation were the quasi-war with France and the Federalist domestic policies more unpopular than in the Commonwealth of Virginia. Writing to Thomas Jefferson, Madison exclaimed that President Adams was verifying by his administrative policy the characterization drawn of him by Dr. Franklin: "always an honest man, often a wise man, sometimes wholly out of his senses."19 While Congress still debated passage of the Sedition Act, Republican Senator from Virginia, Henry Tazewell, wrote from Philadelphia to Madison charging that such legislation would "indulge that appetite for tyranny that alone could have occasioned the introduction of the principle."20

The Alien and Sedition laws posed a double threat to the Virginia Republicans. The lengthening of the residency requirement and provision for arbitrary deportation of aliens were viewed as an attempt to undermine the traditional Republican strength among the immigrant population in the years before the Presidential election of 1800. The Sedition Act was believed to be but another attack upon anti-Federalist publicists in a daring move to alter the fundamental principles of democracy and to establish a monarchy.21 Jefferson became convinced that the Leviathan of the central government created by such Federalists as Adams, Marshall, and Hamilton would bring about the destruction of the Republic. The broken relations with France merely provided the opportunity for usurpation of power by the political elite who were devoid of faith in the ability of the people to govern themselves.22 In October, 1798, Jefferson revealed his opinion of the Alien and Sedition Laws as being
...an experiment on the American mind, to see how far it will bear
an avowed violation of the Constitution. If this goes down we
shall immediately see attempted another act of Congress, declaring
that the President shall continue in office during life, reserving
to another occasion the transfer of the succession to his heirs,
and the establishment of the Senate for life. ...That these things
are in contemplation, I have no doubt; nor can I be confident of
their failure, after the dupery of which our countrymen have shewn
themselves susceptible.23

The mind of a great many Virginians refused to ignore or condone the chal­
lenge of the Federal government's "experiment" in violation of the liberties
which they felt the Constitution had secured. During the late summer and fall
of 1798, memorials were drawn up at public meetings in a number of Virginia
counties declaring the Alien and Sedition Laws unconstitutional and imploring
the State Legislature to employ the necessary means for their repeal. A
"numerous and respectable meeting of the Inhabitants of the County of Powha­
tan on the 19th of September" produced several resolutions which were printed
in the Virginia Gazette and General Advertiser. The Alien and Sedition Acts
were pronounced "tyrannical and unconstitutional" and the citizens affirmed
the right of the people, as the source of political authority, to resume the
delegated power "to call their Trustees to an account, to resist usurpation,
extirpate the tyranny,...to suspend, alter, or abrogate those laws, [and] to
punish their unfaithful and corrupt servants."24

In October, the freeholders of Prince William County petitioned directly
to the President of the United States for redress of grievances resulting
from the Alien and Sedition Acts. The letter of the petitioners was returned,
unseen by President Adams, at the decision of Secretary of State Timothy
Pickering, to whose office the document had been referred. Pickering refused
to transmit an address which he felt was intended to insult the Chief Magis­
trate by its insinuation that he and the majority of Congress designed the
overthrow of individual rights.25 Mr. P. Johnston, who had conducted the
correspondence with the Secretary of State, vehemently objected to the fact that a member of the Administration had taken it upon himself to prohibit an expression of the people's opinion from reaching its proper and intended destination. He maintained that Pickering's position judged it disrespectful to government and disobedient to the law to express disagreement with the policy of office holders or to state the opinion that certain measures had violated the Constitution. In effect, the right of expressing any political judgment that did not applaud the general government was being denied. Johnston accused Congress and the central Administration of hiding behind pretences of expedience and necessity in their attempt to justify the Alien and Sedition Laws. While the citizens of Prince Edward remained unconvinced of the constitutionality of these acts, Johnston pledged their determination nevertheless to obey them until they were officially and peacefully repealed.

The Journal of the House of Delegates for the session commencing December 3, 1798, recorded the resolutions adopted by two memorials which were introduced into the Virginia Legislature. The inhabitants of Spotsylvania had resolved at their courthouse to assert the right of citizens to freely scrutinize the measures of their government and publicly pronounce their opinion on the general tendency of the laws. The powers of the general government were recognized as being limited and defined, and the exercise of authority beyond what was enumerated was declared to represent an assumption of the power reserved to the states. The petitioners claimed that the Alien and Sedition Acts violated the Constitution by consolidating the powers of the executive and judicial branches in dealing with aliens, and by restricting liberty of speech and press. The final resolve was a prayer that the General Assembly would exert its best efforts to obtain a repeal of these laws.

A similar memorial from a number of Caroline County freeholders was
presented and read in the House of Delegates on December 8, 1798. This ad-
dress put forth freedom of person and speech as the essence of political
liberty and then proceeded to declare the Alien and Sedition Acts violative
of both freedoms. If the laws were constitutional, then the Caroline citizens
reasoned that either the Constitution had been misunderstood, or else this
fundamental document was insufficient for preserving human rights. Of course,
if the acts were shown to be unconstitutional, it clearly indicated usurpation
by the government of the rights of the people. An interesting and significant
argument of the Caroline memorial, particularly in light of subsequent Federa-
list reaction to the proceedings of the Virginia Legislature, was the idea
that aggression upon the rights of citizens would produce internal division,
weaken the resistance of the public against foreign invasion, and undermine
popular powers to oppose domestic tyranny. The petition from Caroline County
closed with the reassurance of support for any measure which the Legislature
deemed necessary for the preservation of liberty.

The petitions and memorials were referred to a Committee of the Whole
for consideration. Earlier in the course of proceedings, John Taylor of
Caroline moved for leave to introduce a bill for securing the members of the
Legislature from persecution under the Sedition Act, in case they should think
it proper to charge Congress with an infraction of the Constitution. The
motion was opposed on the grounds of the inutility of such a precaution, but
leave was granted and a committee appointed. On December 10, 1798, the
famous Virginia Resolutions were first presented by Taylor. Although he
had been among the first Republican statesmen in the summer of that year to
suggest the possibility of employing the instrument of the state legislatures
as a basis for the movement to amend the Constitution, the Resolutions were
actually penned in secrecy by James Madison.
The document introduced contained eight separate declarations. The first two were an expression by the General Assembly of its support for the Constitutions of the United States and Virginia, its willingness to defend the nation against internal and external aggression, and its warm attachment for the union of states. The duty of the state legislatures to stand watch over and oppose any violation of basic constitutional principles was also asserted. The important third resolution set forth the theory of the Federal government as resulting from a compact of the states. The Constitution sealed that compact and made the powers of the central government

...no further valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers not granted by the said compact, the States, who are parties thereto, have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them. 32

The "obvious tendency and inevitable result" of the Federal government's attempt to extend its powers by forced construction of the Constitution would be to transform the United States Republic into a monarchy.

Specific objections to the Alien and Sedition Acts were presented in the fifth resolution. Both were viewed as an exercise of undelegated power. The Alien Act attempted to unite in the President both legislative and judicial authority. The Sedition Act represented an abridgment of free communication which was deemed the foundation and guardian of all other individual liberties. Believing that indifference to the dangerous precedent set by these acts "would mark a reproachful inconsistency and criminal degeneracy," the Resolutions included an appeal to the other states for their concurrence in declaring the laws unconstitutional. 33

On December 21, 1798, after a vigorous debate, the Virginia Resolutions passed with slight modifications in the House of Delegates by a 100-63 majority.
Several days later the Senate also voted affirmatively, 14-3, for the Resolutions. The Governor was instructed to submit copies of the Resolutions to the executive authority in each state with a request that they be submitted to the legislature. Copies were also forwarded to each Senator and Representative from Virginia in the United States Congress.

Perhaps of even greater significance and consequence than the Virginia Resolutions in its embodiment of libertarian republicanism and in its impact within the state, was the "Address of the General Assembly to the People of the Commonwealth of Virginia" adopted on January 22, 1799. Approximately 5,000 copies of this address were printed and delivered to all Federal and county courts in Virginia for distribution among the people along with the Declaration of Independence, Constitution of the United States with Amendments and ratification proceedings, the Alien and Sedition Acts, and the Resolutions of the Assembly objecting to the Acts. In reality, the Address represented an attempt to justify the action of the Legislature in regard to the Alien and Sedition Acts by drawing the people's attention to the emergency situation which occasioned the adoption of the Resolutions. A forceful defense of state's rights and civil liberties was brilliantly incorporated into the Address.

The people were first warned of the encroachments of the general government which established dangerous precedents under the pretext of necessity and expediency. Enthusiasm against a threat from abroad must not blind the citizens to usurpation at home. The enumeration of powers granted to the government to insure against such usurpation became meaningless and ineffective if supplemented with greater undefined, inherent, or implied powers. The Sedition Act was emphasized in the Address as an example of the tendency to strip the states of their rights. To those who might advocate the precaution
of curbing licentiousness in a period of national unrest, the argument was proposed that calumny was preferable to usurpation, the latter offense currently being concealed by public indignation against the former. Calumny was forbidden by laws, injured individuals, and could be redressed through the judicial system. The crime of usurpation, however, was forbidden by the Constitution, injured the states, and could be remedied only by an act of society. Acquiescence of the states to repeated infractions of the federal compact would either result in consolidation, which would in turn render the state governments impotent, or prepare the way for revolution.

The Republican accusation that the distinction between liberty and licentiousness of the press had been created by the Administration in order to transform the Third Amendment into an instrument for abridging rather than insuring freedom, was also woven into the Address. The people were made aware of the implications of this distinction if applied in the area of religious freedom. By making opinions as well as facts punishable, the law opened up the possibility that men of particular religious opinions might be excluded from public office because their opinions were considered dangerous; such exclusion would not amount to an establishment of religion in violation of the Amendment. The burden, if not impossibility, of proving the truth of one's opinions represented a severe limitation upon the free range of the human mind. At this point in the Address a late memorial from the United States envoys to the Minister of the French Republic was cleverly inserted to expose the sophistry of the Federalist distinction between liberty and licentiousness.

The genius of the Constitution, and the opinion of the people of the United States, cannot be overruled by those who administer the Government. Among those principles deemed sacred in America, there is no one of which the importance is more deeply impressed on the public mind than the liberty of the press. That this
liberty is often carried to excess; that it has sometimes degenerated into licentiousness, is seen and lamented, but the remedy has not yet been discovered. Perhaps it is an evil inseparable from the good with which it is allied; perhaps it is a shoot which cannot be stripped from the stalk without wounding vitally the plant from which it is torn. However desirable those measures might be which might correct without enslaving the press, they have never yet been devised in America.36

The Sedition Act represented a clear departure from the traditional American preservation of the liberty of the press and was thus opposed for placing the free exercise of both political and religious opinion in a state of danger, and for arresting human reason in its progress toward perfection. The Address concluded with the ominous prediction that the measures already adopted by the Federal Government if uncontrolled would lead to the following three consequences: monarchy, standing armies, consolidation.37

The Virginia Resolutions of 1798 and the accompanying Address to the people of the state represented the view of the majority of the members of the Virginia Legislature during that session. In the debates which preceded passage of the Resolutions, Republican representatives in the House of Delegates including John Taylor of Caroline County, William Ruffin of Brunswick County, John Mercer of Spotsylvania County, William Foushee of the City of Richmond, James Barbour of Orange County, and William Daniel, Jr. of Cumberland County argued the unconstitutionality of the Alien and Sedition Laws on the grounds that they were manifestations of the following infractions of the Constitution: transcending the enumerated powers of Congress; restriction of immigration prior to 1808; abridgment of the guaranteed rights to trial by jury, freedom of speech, and liberty of the press; and consolidation of executive, legislative, and judicial authority. They denied the appeal to a common law foundation of the Constitution as an expedient method of broadening an otherwise express, limited, and well-defined document. The theory
that the Constitution represented a compact of the states and that the state legislatures were bound to uphold the Constitution was espoused, in much the same manner as it appeared in the final Resolutions. Finally, the Republicans maintained that the Resolutions were not intended to promote insurrection, but rather aimed at co-operation of the state governments in redressing mutual grievances.

Before examining the nature of the response of the state legislatures, county courts, and general public opinion in Virginia to the Resolutions, an inquiry into the Federalist sentiment in the Legislature would seem both beneficial and essential. The minority vote of 63 members of the House which expressed their opposition to the Resolutions hardly can be ignored as insignificant or dismissed as inconsequential. The four outstanding Federalist spokesmen during the House debates, George Keith Taylor of Prince George County, Edmund Brooke of Prince William County, Archibald Magill of Frederick County, and General Henry Lee of Westmoreland County, offered cogent and substantial arguments in support of the Alien and Sedition Laws as well as in opposition to the method and implications of the Resolutions.

Mr. George K. Taylor was the first member in the House of Delegates to expound the Federalist position. He claimed that the Resolutions were a declaration of fact not opinion in regard to the unconstitutionality of the Alien and Sedition Laws. He reminded his fellow representatives that these acts had been passed by both houses of Congress, the lower body consisting of the direct agents of the people. The other state legislatures had approved of the laws either by an address or resolutions. Surely, Mr. Taylor contended, all the wisdom of America did not lie in the Virginia Legislature! If, however, the Legislature, after serious deliberation, should come to the decision that the laws were unconstitutional, their opinion ought to be clothed in a
language which did not encourage resistance to the government. The Resolutions made it the people's duty to defend themselves against the encroachment of the general government. The consequences of such defiance would certainly be no less than confusion, insurrection, and anarchy. 39

Mr. Taylor's defense of the constitutionality of the recent measures of Congress was excluded to the Alien Law. In refutation of the argument that this act exceeded the powers granted the the Federal government, he referred to the general purposes of government stated in the Preamble to the Constitution, the necessary and proper clause, the power to define and punish felonies against the Law of Nations, and the obligation to protect the states against foreign invasion. Aliens were not parties to the contract of the Constitution and under the Law of Nations were admitted into a country by permission; their presence was an act of grace, not a natural right. The situation between American and France, although war had not been declared, was surely not peaceful, and the evidences of French hostility warranted removal of suspicious and dangerous aliens. Taylor believed that the right of the individual ought to yield to the good of the community. If the right of habeas corpus could legally be suspended in times of rebellion or invasion for all citizens, so ought aliens to be restrained in dangerous times. In regard to the charge that the Alien Act combined powers in the President, Taylor questioned who else but the Chief Executive was capable of administering the law. The existence of the Virginia Law of 1792 providing for the removal of aliens by the Governor was drawn to the attention of the House. It appeared to Taylor that the present members of the Legislature were disputing a matter which a previous Legislature had considered indisputable. 40

The major contribution of Archibald Magill to the debate was his raising of the question as to whether a state legislature had the right to declare an
act of Congress unconstitutional. He asserted that this power of judgment was reserved solely to the Federal judiciary. He was alarmed by the argument of John Taylor that the condition under which the Constitution was originally adopted in Virginia, released the state from being bound by ratification once the contract of the Constitution had been broken. Magill also denied the relevance of the idea that the Alien Act violated the clause against restriction of migration before 1808, because he believed that this was intended to apply only to slaves. The theory that doctrines of common law form the basis of the American legal system was expounded by Magill. He maintained that the Sedition Law created no new offense or addition to the existing penal code, but simply made culpable what was already prohibited by common law. Blackstone's *Commentaries*, Volume IV, was cited to give the history of the liberty of the press and to show that this freedom did not extend to exemption from legal punishment in the case of malicious or false writings.

The opposition of Edmund Brooke to the Virginia Resolutions was based upon his conviction that they were an improper mode of expression and would tend to produce resistance to the laws of the government. In his opinion the Resolutions were

...in the highest extreme, dangerous and improper; inasmuch as they had, not only a tendency to inflame the public mind; —they had not only a tendency to lessen that confidence, that ought to subsist between the representatives of the people in the general government, and their constituents; but they had a tendency to sap the very foundation of the government, by producing resistance to its laws; and were in the eyes of all foreign nations, evidence of imbecility in our government, to protect itself against domestic violence and usurpation.

In any conflict between the Federal and state governments, Brooke pledged his allegiance and obedience to the government of the United States where the representation of the people was purer and more equal. Every 30,000
citizens were represented in Congress. In Virginia counties with 1500-2000 freeholders the voters were entitled to the same number of representatives in the Legislature as those counties with 150-200 freeholders. How then, could the House of Delegates claim to be an estimate of the general will of the people in that state? 45

"Dragoon Harry" Lee began his address to the House by denying the fundamental principle of the Resolutions, that the Constitution was a compact of states. The Articles of Confederation had been such an agreement but their ineffectiveness was the cause of forming the present system of government which derived its power directly from the people. He believed that if the government was worth preserving, it must be provided with the means of self-defense. The Sedition Act was but an earthly manifestation of the divine commandment, "Thou shalt not lie." Even if the Alien and Sedition Laws could be proven unconstitutional, Lee disagreed with the course outlined in the Resolutions. He felt that the document would not have exhibited such a hostile mood if repeal had been the real object of its authors, and implied that their real aim was promotion of disunion. The people were the only justifiable judges of national and state affairs, and their opinion would be obtainable in the coming elections. 46

By March, 1799, all the replies from all the northern states who responded to the Resolutions had been received. They were all unfavorable and, for the most part, rejected the Resolutions on the principle that a state legislature had no right to pass judgment on the constitutionality of laws enacted by Congress. In Maryland the debate was confined to the Legislature. The Committee to whom the Resolutions had been referred produced a report stating their opinion that such a document was an improper interference with the jurisdiction of the Federal courts. A recommendation to repeal the Alien and
Sedition Acts under the present crisis was deemed both unwise and impolitic. Jonathan Trumbull of Vermont wrote to the Virginia Governor upon receiving the Resolutions in January, and expressed his regret that such sentiments relative to measures of the general government had been adopted by the "elder sister" state. Vermont's Governor Isaac Tichenor in his speech to the General Assembly appeared confident that the Resolutions would meet with decided disapprobation because "they contain principles hostile to your best interest, and because I know you love your country, and are rationally attached to the principles of our excellent Federal Constitution." Overwhelming rejection of the Resolutions followed in Vermont.

In Massachusetts, John Lowell, leader of the Federalists in the House, expressed the majority opinion that the usurpation of power by the state legislatures would undermine the authority of the Constitution. He furthermore pronounced that the Alien and Sedition Acts were not only constitutional, but necessary and expedient measures forced upon the United States by the machinations of France. The Rhode Island Legislature asserted that ultimate authority of deciding the constitutionality of any United States law belonged to the Federal courts and the Supreme Court. For a state to assume that authority would mean a blending of legislative and judicial functions in one body. The Resolutions were thrown under the table by the Pennsylvania Senate, and the House declared that the principles of the Resolutions were calculated to destroy the existence of the government. The debate in Pennsylvania was widely extended in the newspapers where Federalists emphasized the alarming possibility of resistance to the Federal government rather than examining the cause of the opposition as stated in the Resolutions.

From the Newark New Jersey Gazette came a report of the reception of the Resolutions in the Legislature of that state with the comment that, could
the despicable men "who drafted those treasonable resolutions against the laws of Congress for the punishment of seditious lyars, and the removal of dangerous aliens, have witnessed the scene which occurred in the House of Assembly on Friday evening last, all their hopes of exciting the state of New Jersey into revolt against the national government would have been blasted forever." After totally rejecting the Resolutions, the only question for the members of the New Jersey House was to determine the best method for expressing their detestation. It was decided to dismiss the Resolutions from the files. They were not allowed to remain on the table lest others suppose that the representatives of that state contemplated holding correspondence so insulting to the Federal government. One New Jersey legislator even put forward the opinion that Virginia cared nothing about repeal of the Alien and Sedition Laws but was aiming to destroy the Constitution because the small states had equal representation with her in the Senate.

By order of a resolution passed on January 22, 1799, in the Virginia General Assembly, the Governor was instructed to forward copies of the Resolutions and Address along with the other specified documents to each county court in the state. On March 31, the clerk of the Court of Fairfax presented the twelve justices with the packet received from the Executive. The Court felt it highly improper for them to have anything to do with the party in the House of Delegates by distributing the Address or Resolutions. They ordered the pamphlets sent back to Richmond at the first opportunity.

At a meeting of the Norfolk Borough Court in April, the justices maintained that their allegiance to the Constitution would not allow them to participate in disseminating opinions that might lead to the dissolution of the union. They asked the citizens to beware of men who sought personal aggrandizement under the guise of patriotism, because they were usually pro-
jecting plans for civil discord. It was decided unanimously that the docu-
ments sent by the Governor remain in the clerk's office and not be distrib-
uted generally to the public. It was decided unanimously that the docu-
ments sent by the Governor remain in the clerk's office and not be distrib-
uted generally to the public. 57 Similar reception of the Resolutions and
objections to complying with the wishes of the General Assembly were record-
ed by the Prince William County Court in March, 58 and by the Pittsylvania
County Court in July. In a dramatic scene in Greenbrier County, the Court
of Justices defiantly tore the legislative Address into pieces.

Virginia public opinion in 1799, was certainly influenced by the Feder-
alist reaction to the Resolutions. In order to minimize the impact of the
Address to the people, also written by Madison and looked upon by many as
Republican campaign propaganda, John Marshall prepared "The Address of the
Minority in the Virginia Legislature to the People of that State; contain-
ing a Vindication of the Constitutionality of the Alien and Sedition Laws."
The House of Delegates voted not to publish this Address along with that of
the majority, so the Federalists printed and circulated it unofficially,
without making Marshall's authorship publicly known.

The minority lamented passage of the Resolutions and deprecated the
Legislature's deviation from its proper role. An appeal to the principle of
majority rule was made along with a reminder of the situation under which
the Alien and Sedition Laws were passed. Congress had been forced to choose
between submission to a foreign power or maintaining national independence
which necessarily required certain measures for self-preservation. The Ad-
dress embodied the theory of loose or broad constructionism; the government
was limited in its objects but not in the means necessary for obtaining these
ends. The Constitution was not intended to be a law capable of defending to
every minute detail, but must unavoidably be interpreted in various points
by the general expressions contained in it. The major attack of the minority
was upon the hostility of the criticism levelled against the Alien and Sedition Laws. There would have been no objection to the majority action if ordinary, peaceable, constitutional efforts had been employed for effecting their repeal, and if the Legislature had exhibited a decent respect for the majority of the American people whose faith and allegiance rested in the general government.

The minority Address was an elaborate and wordy document. Marshall's biographer has suggested that the author's use of lofty phrases and eloquent language may have served as a stumbling block to the reception of the Address among the people. Whether or not that particular document was widely read throughout the state, there is good reason to believe that the debate over such fundamental issues as nationalism versus state's rights was kept constantly in the public eye by the newspapers and through pamphlets. In March and April, 1799, a series of articles with the signature "Simplex" and addressed to the people of Virginia were printed in the Virginia Gazette and General Advertiser. The first object of attack by the author was the "violent and inflammatory" Address of the majority in the Legislature to the people, which breathed such bitter resentment against the general government that Simplex concluded the Resolutions "were not preceded by a thorough and temperate discussion." If Congress had published such a document justifying the Alien and Sedition Acts, he ventured to say that the Virginia Republicans would have construed it to be clear evidence of conscious guilt.

The Federalist opposition to the attempt of the State Legislature to judge Federal laws was given freshness and depth by the pen of Simplex. He began by charging the Virginia General Assembly with the very crime which they accused Congress and the President of committing, namely, usurpation of power. The Assembly claimed to have acted as representatives of the people,
yet they did not represent the people in the concerns of the general government, nor were they empowered to act in their name. The second resolution passed by the Legislature revealed that the majority considered it their duty to watch over and oppose infractions of constitutional principles. Simplex raised the crucial question whether the word "state" in the contract theory of interposition stood for the Legislature or the people. Surely the Assembly did not equate the citizens and the state as being one and the same, but were referring to themselves. Simplex maintained that the people were totally excluded from the Resolutions, for the majority of the Assembly represented the minority opinion of the people. He believed that the majority of Virginians were pleased with the laws of Congress, would aid the general government in their execution, and would have opposed the Resolutions. If the Assembly viewed certain acts of Congress as unconstitutional, they had the right to declare their opinion, but not to make a declaration in the name of the people. A state legislature could not be responsible for measures it had no hand in enacting; in any judgment pronounced upon Federal laws, the members of the Assembly should be considered acting as other citizens in their own name. They possessed no more power in their legislative role regarding acts of the union than that of private individuals.

Probably the most widely-read and well-received Federalist polemic was a pamphlet issued in February, 1799, by a citizen of Westmoreland County and signed "Plain Truth". Before commercial publication, this address also appeared as a series in several issues of the Gazette. The pamphlet began by extolling union as the essential virtue of a nation and, as the only means of insuring self-preservation, also the guardian of self-government and individual liberties. Peace could be maintained only by preservation of the union. Plain Truth discredited the hopes of those who recognized the necessity of
union, but advocated dissolution of the present government and the creation of an alliance between the states. Such a dangerous experiment was doomed to failure. The angry temperament which would accompany dismemberment of the nation would negate the common interest and good will necessary for the foundation of an alliance. The erection of a new government upon the ruins of the old Constitution would be impractical. The pamphleteer felt that "to every cool and reflecting mind it must be obvious that our national independence, and consequently our individual liberty; that our peace and our happiness depend entirely on maintaining our union. It is not less obvious, that our union cannot survive our existing government."

Plain Truth's dissertation on union was a convenient and convincing preface to his exposition of the Virginia Resolutions. The result of the compact theory prescribed in the Resolutions, in the author's opinion, was to substitute the state government for the people as parties to the Constitution and, thereby, to place in conflict the two governments of the republican system, both state and national, each contending for the loyalty and obedience of the people. The tendency of such a system could be no less than disunion. Recognizing the fact that no man approved of every act of any government, and that every person had the right to express disapproval, the author distinguished between friendly censure and malicious accusation. The Virginia Resolutions revealed the real motives and objects of the Legislature. If the majority wish had been to preserve government and correct measures they believed to be unconstitutional, rather than to render the government hateful to the people, then their censure would have been firm and moderate.

The debate surrounding the Virginia Resolutions reached a height of intensity and emotion with the approach of Congressional elections in the spring
of 1799. The Republicans viewed the up-coming elections as an opportunity to legally remedy the oppressive measures of the preceding Congress. In the Federalist's eyes, April was the time to rally to the cause of union and elect those friendly to the government that had preserved the nation in the crisis with France. In a report to the citizens of Frederick and Berkeley counties less than a week before the elections, retiring Representative Daniel Morgan warned his constituents that the welfare of the nation depended upon the return to office of honest men and supporters of the Administration. The state of public affairs he believed to be critical. "The Crisis is arrived; common exertions will no longer suffice—you are now to determine whether you will support union, your independence and national consequence, or dwindle to a state of tributary vassalage."  

A number of freeholders from the Congressional District composed of the counties of Prince William, Loudoun, and Fairfax addressed their fellow citizens with an endorsement of Col. Leven Powell, the candidate opposing Major Roger West for the seat in Congress. West had publicly declared his political views based on disapproval of standing armies and the Alien and Sedition Laws. The freeholders observed that any man who would sit back while malice and falsehoods were circulated against the government was not "a proper person to represent a people who love truth and justice."  

A Fairfax County voter addressed a letter to the Editor of the Columbian Mirror and Alexandria Gazette commenting on the rumor that the 25% increase in state taxes was to be used for the purpose of arming Virginians against the Federal government. A letter from John Nicholas to his brother Wilson Cary Nicholas repudiating former Republican affiliation, revealed the allegation that the Legislature had gathered a store of arms in Richmond with the object of destroying the foundations of government. Although any
connection between opposition to the Alien and Sedition Laws, and the reorgan-
ization of the Virginia militia, the purchase of arms, the establishment of
an armory, or the levying of taxes for the support of a war against the Fed-
eral government have been rejected from lack of documentation, there is
evidence that this charge enjoyed wide currency in the month preceding the
elections and probably strengthened the Federalist vote.

To some of those who believed the Virginia Resolutions carried the
seeds of insurrection and disunion, more was at stake in the elections that
the repeal or continuation of the Alien and Sedition Acts. An alarmed friend
of the government called "Publius" sought to awaken the public to the exigency
of the situation.

When the monster faction has risen its snakeclad head so high as
even to threaten the vital principles of the Union, when wretches
wholly devoted to the enemies of their country, as to hurry through
the legislatures resolutions fraught with every evil the most ma-
lignant hatred could suggest; is it not time for every friend to
this country to rouse himself, and contribute as much as in his
power to the support of the government:...I must once more entreat /
each friend to his country to strain every nerve for its salvation,
to strangle the viper of sedition in its infancy, for if it is al-
lowed to ripen into maturity, our religion, our government and our
lives, must fall a sacrifice to it.76

Another lover of the union, deploring the descension of Virginia from
her natural pre-eminence among the states to become a champion of sedition
and infidelity, attributed the existence of the Resolutions to political mo-
tives. "Arminius" maintained that those seekers of personal aggrandizement
in the Legislature had no hope of fulfilling their political ambitions unless
they could persuade the voters that they were the only true patriots and that
the men in office ought to be removed. The Resolutions were a summons to
resistance because the government would not permit dangerous and treasonable
aliens to remain in the country, and because the privilege of lying had been
taken away. The author equated the defenders of the Resolutions with the
pro-French element in the population. The election of such men and change in the existing Administration would result in the substitution of "French religion, French licentiousness, and French despotism," for "the religion of Christ, for the pure morality and genuine liberty of America." Arminius concluded with a call on Virginia to dismiss from confidence those whose principles would lead to destruction, and to make April 24 a glorious day. To sanction the Resolutions by election of their advocates would be "...to trample the religion of our fathers under feet; to dismiss the humane and consoling worship of Christ; for what—the altars of Moloch stained with human gore; or, in other words, for the reign of French atheism and Robespierran tyranny."77

The Congressional elections of 1799 did not determine the fate of the Republic, but there has been some disagreement among historians as to what the results actually did reflect about public opinion toward the Virginia Resolutions. Eight Federalists were returned to Congress out of Virginia's nineteen representatives, the largest number ever elected in the state. One could conclude that the Resolutions had little immediate propaganda value in Virginia, and that the nationalism provoked by the undeclared was of greater impact than the errors of the Federal Administration.78 Others have viewed these same results as a triumph for the supporters of the Resolutions based upon the absolute majority of Republicans in the Virginia delegation to the House of Representatives. They believe that the outcome indicated that the people of the state approved their own verdict of 1798, regarding the constitutionality and expediency of the Alien and Sedition Acts and the proposed remedy.79

While the effect of public opinion toward the Resolutions upon the election outcome is difficult to measure or prove, the proceedings of the 1799-1800 Virginia Legislature revealed that the position of the majority with
respect to their action in the previous session had not been greatly altered after a year of personal reflection and vehement outside disapprobation. By a vote of 100 to 60 the House of Delegates approved the report of Madison's committee which had been appointed to consider the replies of various states to the Resolutions. The Report of 1800, as this document was termed, reiterated the arguments of 1798 and refuted the accusations made by the other states. The centralizing measures of the Federal government were again denounced as dangerous precedents resulting from implication and loose construction of the Constitution. Madison was concerned about refuting the charge that the Resolutions promoted disunion or espoused a theory of state's rights in order to invalidate Congressional laws. Recognizing that unguarded appeal to a state's right compact theory was as potentially destructive of union as the encroachments of the general government, the Committee maintained that the Resolutions were designed to express an opinion and excite reflection. They possessed no intrinsic finality or force of compliance. Before terminating the session in January, the General Assembly instructed Virginia Senators Samuel Thompson Mason and Wilson Cary Nicholas to procure a repeal of the Alien and Sedition Acts.

The Federalist reaction to the Resolutions of 1798 as exhibited by such polemicists as "Simplex", had raised the question whether the action taken by the Legislature actually reflected the majority opinion of the state. Although this accusation would be difficult to prove, there is evidence that a strong undercurrent of opposition to the principles of the Resolutions existed at the local level even before they were passed. From a Petersburg freeholder came the report of the situation in which resolutions against the Alien and Sedition Acts were adopted in Dinwiddie County. He pointed out that the citizens in attendance at the courthouse on that day were few in number in
comparison with those absent. The resolutions were the work of a Petersburg lawyer and were introduced with no opportunity for the citizens to examine them. In the opinion of the reporting freeholder, the principles of the county resolutions were incompatible with peace and union, and were repugnant to political truth. The enactment of such an appeal by the Assembly would invite the people to resist the law. An inhabitant of Dinwiddie County expressed his opinion that the Sedition Act was unnecessary, impolitic, and dangerous, but was not convinced of its unconstitutionality. He recommended that his fellow citizens pursue a conduct respectful to the national legislature and trust that the offensive laws would be repealed in due time without incurring the risk of disunion.

From the county of the major proponent of the Virginia Resolutions in the House of Delegates, John Taylor, came the report of a citizen who had been present at the Caroline courthouse on the day that the memorial complaining of the Alien and Sedition Bills was sanctioned. In lieu of the memorial, resolutions were proposed which would state the support and confidence of the freeholders in the President and Congress and their determination to defend the laws against foreign and domestic enemies. Although the vote favored the memorial, this bystander gave his impression after mixing with the crowd, that the real wishes of the people were with the ideas of the resolutions. In December, 1798, a counter-memorial was circulated in Caroline County and forwarded to the General Assembly in Richmond. The citizens protested the fact that the original memorial was sanctioned by a small part of the inhabitants and that few freeholders had seen or heard the memorial read before it was presented for the vote. The Alien and Sedition Acts were declared by the counter-measure to constitute a wise part of the general system of defense forced upon the nation by self-preservation,
the first law of God and Nature. 85

It can not be assumed that opposition in Virginia to the Resolutions of 1798 was always founded upon a firm support for the defense measures of the Federal government. Writing during the nullification crisis in the late 1820's, William McCoy explained to his constituents his reasons for voting against the Resolutions in 1798. He had highly disapproved of the Alien and Sedition Acts and never doubted their unconstitutionality, but feared a collision of the state and Federal powers at a time when the concerted effort of both were necessary to repel invasion. His greatest objection was the method of protest of the Resolutions. Remonstrance to the tribunal that had passed the laws was the only common courtesy. If repeal failed to be secured, elections offered another peaceful and legal recourse. Calling a convention to amend the Constitution was the last alternative. If all of these peaceful means had been exhausted, then McCoy said he would have voted for Taylor's Resolutions. 86

Taken together, the Cabell case and the Virginia Resolutions of 1798 represent a major chapter in the Republican's struggle for defense of basic civil liberties in the first decade of the new nation's existence. The presentment of the grand jury in 1797, and the passage of the Alien and Sedition Acts each provoked an intense and prolonged controversy over fundamental issues, both prompted local petitions against federal encroachment, and both directly resulted in official protest by the Virginia Legislature in the form of resolutions. The dissimilarities in the nature of the grievances and the disparity in the proposed remedies of the two episodes must not be overlooked, however, if a greater understanding of the total situation is to be gained. The villain from the Republican point of view was the judicial branch of the Federal Government in the case of Cabell's presentment, and the object
of their disapprobation was the censure of free communication between a
representative and his constituents. In the enactment and execution of
the Alien and Sedition Acts both houses of Congress and the Administration
were judged guilty of violating the Constitution by an illegal abridgment
of the freedom of trial by jury, speech, and press.

The Legislature's appeal in 1797 was directed toward the United States
Congress, based on the belief that the legislative branch was closest to
the people and ought to judge the activities of its own members. It was
hoped that further written delineation of the rights and duties of grand
juries would be forthcoming. Because the source of violation in 1798 was
Congress, the Virginia Assembly appealed directly to the legislatures of
the other states to join them in declaring the Alien and Sedition Acts un-
constitutional. Paradoxically, the object of the Republican attack in 1797
became the Legislature's method of opposition the next year. The grand jury
was accused of usurpation of power because it pronounced an opinion of the
tendency of certain writings rather than confining proceedings to punish-
ment of offenses against the laws they were sworn to uphold. The famous
Virginia Resolutions were defended as an expression of the opposition of
the majority to certain acts of Congress. Although the Resolutions carried
no force or finality, they were vigorously assailed as an assump-
tion of the power reserved to Federal courts. The Virginia legislators,
it was maintained, could not represent the people of that state in their
judgment of laws which they had no part in enacting.

The Virginia Resolutions were a natural response to a violation of
civil liberty in a period before the doctrine of judicial review was estab-
lished or a real consensus with regard to the nature of the union had been
formulated. "There was no impropriety in attempting to answer the perplexing question of how the constitutionality of federal action could be fairly determined." Public opposition to the proceedings of the Virginia Legislature was rooted in real fear of war with France and the threat of invasion, and nurtured by a sincere belief that the effect, if not the intention, of an acceptance of the Resolutions would be disunion and insurrection. The incompatibility and inherent weakness of the method and the end of the Virginia Resolutions was remarkably perceived by an anonymous contemporary of the participants in the controversy of 1798.

...guardianship of rights of human nature will ever be the most honorable task assigned to man—as long as opposition to any government is aimed at preservation of those rights against encroachment of power, so long will that opposition find supporters among the enlightened. But whenever it is found to have in view the destruction of the bonds of society by which alone those rights can be permanently secured, then indeed the object, which was once lovely, becomes deformed into the very monster, against which its pleasing contrast had created such abhorrence, and of course, the opposition loses its best and ablest advocates."
FOOTNOTES

1. The Virginia Gaxette and General Advertiser, May 27, 1797.

2. Ibid., May 24, 1797.

3. Ibid., June 14, 1797.

4. Iredell's defense of his charge before the grand jury appeared in the July 5, 1797 edition of the Gazette. He claimed that he knew nothing of Cabell's circular letters until the presentment was read in court. The charge had been written in Philadelphia for general delivery to district courts in both Virginia and Maryland, and certainly not with foreknowledge of the Cabell case. The practice of grand juries to present grievances which could not be considered foundation for criminal prosecution was frequent among southern states, Iredell noted; and he never thought it proper to suppress such an established custom, whether it was personally agreeable to him or not.

5. The Gazette, June 14, 1797.

6. Ibid., July 19, 1797.

7. Ibid., June 21, 1797.

8. The first letter of Jurgurtha was answered in the July 5, 1797 issue of the Gazette by "Marius" who attacked the major proposition concerning jury rights with the argument that the right of judging individually and judicially were not equal and that the right of censuring individuals by the public did not extend to a collective body of jurors.


10. The Gazette, July 5, 1797.

11. Ibid.


13. Ibid., pp. 62-64.


17 Ibid., pp. 177-178.


21 Ibid.


24 The Gazette, September 25, 1798.

25 Ibid., October 16, 1798.

26 Ibid., November 13, 1798.


28 Ibid., p. 15. Memorials to the same effect as the two from Caroline and Spotsylvania Counties were also presented from Essex, Orange, Louisa, Dinwiddie, Hanover, and Buckingham Counties.

29 The Columbian Mirror and Alexandria Gazette, December 8, 1798.


31 Madison's authorship was not revealed to the public until it appeared in Thomas Ritchie's Richmond Enquirer in 1809. Koch and Ammon, p. 148.

32 Journal, p. 31.

33 Ibid.

34 Ibid., p. 96.


36 Ibid., p. 89.
The preceding paragraph is a summary of the Republican argument as found in the 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).

39 Debates, pp. 11-12.
40 Ibid., pp. 13-20.
41 Ibid., pp. 68, 71.
42 Ibid., p. 69.
43 Ibid., p. 71.
44 Ibid., pp. 78-79.
46 Ibid., pp. 111, 113-116.
47 The Gazette, January 29, 1799.
48 Calendar of Virginia State Papers, Vol IX, p. 3.
49 The Mirror, November 19, 1799.
51 The Gazette, April 2, 1799.
52 Anderson, p. 48.
53 The Mirror, February 9, 1799.
54 The Gazette, April 2, 1799.
55 Anderson, p. 52.
57 Ibid., p. 20.
58 The Gazette, March 26, 1799.
59 CVSP, p. 37.
60 The Mirror, April 23, 1799, in Anderson, no. 2 (January, 1900), p. 239.
Plain Truth made the interesting speculation that if the union was ever divided, a southern confederacy would be contemplated with Virginia as its head, and the Potomac River its northern frontier. Only a foreign alliance would be able to sustain these states against coercion of the rest of the nation. See Gazette, February 12, 1799.

The May 7 edition of the Mirror reported that Col. Powell had been elected representative to Congress from the Loudoun County District.

The Virginia Argus, March 29, 31, and April 2, 1799, in Koch and Ammon, p. 163.


Koch and Ammon, p. 241.

For the complete Report see Hunt: pp. 341-406.
82. The Gazette, December 18, 1798.
83. Ibid., December 25, 1798.
84. Ibid., November 27, 1798.
85. Ibid., December 18, 1798.
86. McCoy, pp. 2-4.
88. The Gazette, April 5, 1799.
I. Primary Sources

A. Official Documents and Publications

**Calendar of Virginia State Papers, Vols. VIII, IX.**
An essential and indispensable source. Contains official correspondence with the Virginia Chief Executive. Particularly important for records of the county court response to the Resolutions of 1798.

**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: Printed by Thomas Nicolson, 1798.**

A convenient reference for the actual content of the Alien and Sedition Acts, Kentucky and Virginia Resolution, and replies of some states to the Resolutions.

The major primary source for all proceedings of the Legislature including the content of petitions introduced, Resolutions presented and enacted, and Committee reports.

B. Pamphlets

"Columbus. " "A Letter to a Member of Congress Respecting the Alien and Sedition Laws." Virginia, June 6, 1799.
Written to Thomas Evans of Accomack County, the only Virginia Congressman to vote for the Alien and Sedition Acts. Circulated as a pamphlet reviewing the principles of state's rights and defending the civil freedoms of person and press abridged by the acts of Congress.

McCoy, William. "To the Citizens of the Counties of Rockingham, Augusta, Bath, Pocahontas and Pendleton." Richmond?, Virginia, 1829?
A Representative's account to his constituents of the reason why he voted against the Resolutions in 1798. Says he did not doubt the unconstitutionality of the Alien and Sedition Laws, but disapproved of the method of protest. Very enlightening and interesting considering the fact that McCoy was writing in retrospect during a later nullification crisis.
"Philodemus." "An Enquiry Whether the Act of Congress 'In Addition to the Act, Entitled an Act, for the Punishment of Certain Crimes against the United States' Generally Called the Sedition Bill, is Unconstitutional or Not." Richmond: Printed by S. Pleasants, June-November, 1798.

A good summary of the constitutional debate for and against the Sedition Bill. Reviews the opinions of the original opponents and advocates of the Constitution and Amendments, and concludes that neither intended to grant Congress the right to abridge basic freedoms.

C. Letters


An interesting correspondence between two students of the College of William and Mary. Cabell speculates on the causes for the outcome of the Congressional elections and the influence of the Virginia Resolutions on public opinion.


Although this paper does not emphasize the authorship of the Kentucky and Virginia Resolutions or the private correspondence of the leading Republican statesmen, knowledge of Jefferson's thought and activities is essential background material and this is the major edition of his writings.


Even more important than Jefferson's letters because of Madison's direct involvement in writing the Resolutions of 1798, the Address of the majority, and the Report of 1800. Contains these documents printed in full.


Relates the complaint against the burden of heavy taxes resulting from the general government's determination to establish standing armies and navies after the threat from France had subsided. Believes the tendency of government is toward destruction of republican principles.


Important mainly for Taylor's correspondence with Jefferson during the summer of 1798, when the idea and form of the Resolutions were being conceived.

D. Newspapers, for period May, 1797-February, 1800.

A significant contribution to the study of the contemporary situation. Documents well the thesis that the Virginia militia was not reorganized, an armory established, arms purchased, or taxes levied to support a war against the Federal government in 1798.

Dodd, William E. "John Taylor of Caroline, Prophet of Secession," The John F. Branch Historical Papers of Randolph-Macon College, II (June, 1908), 214-152.

Uses the letters of John Taylor to weave a narrative of his role in the conception and enactment of the Resolutions.


Another standard definitive study. Concerned primarily with the authorship of the Kentucky and Virginia Resolutions. Concentrates on the roles of the two prominent Virginia Republicans, especially the modifying and temperate influence of Madison on Jefferson. Believes the Resolutions were primarily defense of civil liberties rather than a statement of the state's rights theory.


Maintains that Jefferson's defense of political liberty against the Alien and Sedition Laws was not as libertarian as assumed.


Sees Jefferson primarily concerned with protesting an infringement of basic liberties, not promoting action based on a state's rights theory of government. Offers a greater understanding of the method of protest by an explanation of the lack of development in the concept of judicial review at that time.


A complete but general work on the subject.


Discussion of Jefferson the the Sedition Act offers nothing new.


A general account of partisan hostility in Virginia during the last decade of the Eighteenth Century. Emphasizes the activity of James Thompson Callender, not within the scope of this paper.
An extremely valuable source for the public debate over the Alien and Sedition Acts and the Resolutions of 1798. Tends to represent and champion the Federalist cause.

Fredricksburg, Virginia: The Virginia Herald.
Repetitive of articles found elsewhere.

Norfolk, Virginia: The Norfolk Weekly Journal and County Intelligencer.
Not generally helpful.

Petersburg, Virginia: The Virginia Gazette and Petersburg Intelligencer.
Contains nothing not available in other newspapers on this subject.

Richmond, Virginia: The Examiner.
Few issues available for this period, but one contains an important open letter to John Marshall attacking him for not using his influence in the Federalist part to defeat the Alien and Sedition Acts.

Richmond, Virginia: The Virginia Gazette and General Advertiser.
An invaluable source of the polemical writings which presented the fundamental issues of the Resolutions debate to the public. By far the most complete and useful newspaper of this period on the subject.

II. Secondary Sources.

Good background material on the role of Giles as a radical Republican in the Virginia Legislature, but not directly pertinent to the subject of this paper.

One of the standard articles on the Resolutions. Emphasizes the replies from the other states to the action of the Virginia Legislature.

An outstanding and unsurpassed biography of Marshall. Gives a good account of his involvement in the debate and the Congressional elections of 1799.

A popularized, patriotic, contradictory and somewhat inaccurate interpretation of Jefferson and his opposition to the Alien and Sedition Laws.


Written from the viewpoint of one sympathetic to the state's rights struggle. Believes the Resolutions of 1798 were not designed so much to weaken the Federal union, but to express the right of states to prevent unconstitutional assumption of power by Congress.


A helpful focus on the minority party in Virginia during the 1790's, its sentiment and supporters.


Includes a particularly extensive summary of the debates in the House of Delegates in 1798 occasioned by Taylor's introduction of the Resolutions.


The definitive, extensive study of the enforcement of the Alien and Sedition Acts, one of the most recent and most complete works on the subject.